87-1809

No. ———

Supreme Court, U.S.
FILED
FEB 4 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ALLEGHENY PITTSBURGH COAL COMPANY,
Petitioner,

v.

COUNTY COMMISSION OF WEBSTER COUNTY,
WEST VIRGINIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

WILLIAM JAMES MURPHY
Counsel of Record
ROBERT T. SHAFFER, III
MURPHY & MCDANIEL
118 West Mulberry Street
Baltimore, Maryland 21201
(301) 685-3810
Counsel for Petitioner

Of Counsel:
ERNEST V. MORTON, JR.
210 Back Fork Street
Webster Springs, West Virginia
26288
(304) 847-5256

February 4, 1988

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether the Court below erred in rejecting the trial court's finding of "systematic and intentional" discrimination against petitioner in the assessment of its property by local taxing authorities, and in relegating petitioner to a purported remedy under state law that is itself constitutionally inadequate, all in clear violation of equal protection principles enunciated by this Court in numerous decisions, and in clear conflict with decisions of other state courts of last resort and federal courts of appeals.

LIST OF PARTIES AND RULE 28.1 LIST

Included among the parties to the proceedings below were petitioner Allegheny Pittsburgh Coal Company and respondent County Commission of Webster County, West Virginia. Shamrock Coal Company, Oneida Coal Company, Inc. and East Kentucky Energy Corporation also were parties to the consolidated proceedings below, aligned with petitioner as appellees in the Supreme Court of Appeals of West Virginia. It is petitioner's understanding that those parties will be filing in this Court a separate Petition for a Writ of Certiorari to the Supreme Court of Appeals arising out of its decision.

Petitioner Allegheny Pittsburgh Coal Company is a wholly-owned subsidiary of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company. Petitioner's parent companies are in turn wholly-owned subsidiaries of Allegheny Power System, Inc. Petitioner has no subsidiaries. The foregoing information is provided in accordance with Supreme Court Rule 28.1.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES AND RULE 28.1 LIST	ii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	13
A. The Decision Below Is In Conflict With This Court's Decisions Defining Unconstitutional Discrimination In The Assessment of Property For Purposes of Setting Local Property Taxes	14
B. The Decision Below Is In Conflict With This Court's Decisions Regarding The Constitutional Adequacy Of Purported Remedies Under State Law For Discrimination In Property Tax Assessments	20
C. The Decision Below Is In Conflict With Decisions Of Federal Courts of Appeals And The Courts Of Last Resort Of Other States	24
CONCLUSION	28
APPENDICES	
Appendix A: Opinion of West Virginia Supreme Court of Appeals	1a
Appendix B: Judgment of West Virginia Supreme Court of Appeals	12a

TABLE OF CONTENTS—Continued

	Page
Appendix C: Order Denying Petition For Rehearing	14a
Appendix D: Orders of the Circuit Court of Webster County	15a
Appendix E: Orders of the County Commission of Webster County, Sitting as a Board of Equalization and Review	58a
Appendix F: West Virginia Constitutional and Statutory Provisions Involved	70a

TABLE OF AUTHORITIES

Cases:	Page
Allied Stores of Ohio, Inc. v. *Bowers*, 358 U.S. 522 (1959)	18
Bettigole v. *Assessors of Springfield*, 343 Mass. 223, 178 N.E.2d 10 (1961)	26
Chambers v. *Mississippi*, 410 U.S. 284 (1973)	14
Charleston Federal Savings & Loan Ass'n v. *Alderson*, 324 U.S. 182 (1945)	17-18
Chicago G.W. Ry. v. *Kendall*, 266 U.S. 94 (1924)	20
Cumberland Coal Co. v. *Board of Revision*, 284 U.S. 23 (1931)	16-20, 22-23, 26
Cupples Hesse Corp. v. *State Tax Comm'n*, 329 S.W.2d 696 (Mo. 1959)	27
Edelman v. *Jordan*, 415 U.S. 651 (1974)	28
Florida Department of Health & Rehabilitative Services v. *Florida Nursing Home Ass'n*, 450 U.S. 147 (1981)	28
Hooper v. *Bernalillo County Assessor*, 472 U.S. 612 (1985)	19
Iowa-Des Moines National Bank v. *Bennett*, 284 U.S. 239 (1931)	22-23
In Re Chicago Rys. Co., 175 F.2d 282 (7th Cir.), *cert. denied sub nom., Illinois* v. *Sullivan*, 338 U.S. 850 (1949)	24
Killen v. *Logan County Commission*, —— W. Va. ——, 295 S.E.2d 689 (1982)	3
Kline v. *McCloud*, —— W. Va. ——, 326 S.E.2d 715 (1984)	11, 15
Louisville & Nashville R.R. Co. v. *Public Service Comm'n*, 631 F.2d 426 (6th Cir. 1980), *cert. denied*, 450 U.S. 959 (1981)	25
Louisville & Nashville R.R. Co. v. *Public Service Comm'n of Tennessee*, 389 F.2d 247 (6th Cir. 1968), *aff'g*, 249 F. Supp. 894 (M.D. Tenn. 1966)	25
McCluskey v. *Sparks*, 80 Ariz. 15, 291 P.2d 791 (1955)	26
Meyer v. *Cuyahoga County Board of Revision*, 58 Ohio St.2d 328, 390 N.E.2d 796 (1979)	18

TABLE OF AUTHORITIES—Continued

	Page
Nashville, C. & St. L. Ry. v. *Browning*, 310 U.S. 362 (1940)	18
Raymond v. *Chicago Union Traction Co.*, 207 U.S. 20 (1907)	16
Recanzone v. *Nevada Tax Comm'n*, 92 Nev. 302, 550 P.2d 401 (1976)	18
Savage v. *State Tax Comm'n of Missouri*, 722 S.W.2d 72 (Mo. 1986)	27
Shoppers' World, Inc. v. *Board of Assessors of Framingham*, 348 Mass. 366, 203 N.E.2d 811 (1965)	25-26
Sioux City Bridge Co. v. *Dakota County*, 260 U.S. 441 (1923)	10, 15-17, 19-23, 25-26
Sparks v. *McCluskey*, 84 Ariz. 283, 327 P.2d 295 (1958)	26
State ex rel. Ayers v. *Cline*, —— W. Va. ——, 342 S.E.2d 89 (1985)	12-13
Sunday Lake Iron Co. v. *Wakefield*, 247 U.S. 350 (1918)	15-16, 18
Township of Hillsborough v. *Cromwell*, 326 U.S. 620 (1946)	23-24
Wheeling Steel Corp. v. *Glander*, 337 U.S. 562 (1949)	19
WHYY, Inc. v. *Borough of Glassboro*, 393 U.S. 117 (1968)	19

Constitutional Provisions, Statutes, and Rules:

United States Constitution, Fourteenth Amendment, Equal Protection Clause	5, 9-10, 15-16, 22, 27
Johnson Act, 28 U.S.C. § 1341	23, 25
Supreme Court Rule 17.1	14
Supreme Court Rule 23.1	14, 28
W. Va. Const., Art. X, § 1	3, 9-10, 12, 14
W. Va. Const., Art. X, § 1b	3
W. Va. Code § 11-3-24	4
W. Va. Code § 11-3-25	4, 11
W. Va. Code § 18-9A-11	3, 11
West Virginia Supreme Court Rule 24(a)	13

TABLE OF AUTHORITIES—Continued

Other Authorities:

	Page
Lesnick, *Does Full Value Mean Full Value?*, 5 Hofstra L. Rev. 235 (1977)	25
Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 Tex. L. Rev. 885 (1973)	20
Comment, *The Road to Uniformity in Real Estate Taxation: Valuation and Appeal*, 124 U. Pa. L. Rev. 1418 (1976)	18
Note, *Hellerstein v. Assessor of the Town of Islip: A Response to Inequities in Real Property Assessments in New York*, 27 Syr. L. Rev. 1045 (1976)	19
Note, *Inequality in Property Tax Assessments: New Cures For An Old Ill*, 75 Harv. L. Rev. 1374 (1962)	20

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. ———

ALLEGHENY PITTSBURGH COAL COMPANY,
Petitioner,

v.

COUNTY COMMISSION OF WEBSTER COUNTY,
WEST VIRGINIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Petitioner Allegheny Pittsburgh Coal Company respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Appeals of West Virginia, entered in the proceedings entitled *In re 1975 Tax Assessments Against Oneida Coal Company, et al.*, on July 17, 1987.

OPINIONS BELOW

The opinions of the Supreme Court of Appeals of West Virginia and the dissenting opinion of Justices Brotherton and Neely are reported at 360 S.E.2d 560, and are reprinted in Appendix A, at pp. 1a-11a. The Order of the Supreme Court of Appeals is reprinted in Appendix B, at pp. 12a-13a. The Supreme Court of Appeals denied a timely Petition for Rehearing on November 10, 1987, in an Order reprinted in Appendix C, at p. 14a.

The Order and Opinion of the Circuit Court for Webster County, West Virginia (Cline, J.) has not been reported. It is reprinted in Appendix D, at pp. 15a-48a. Additional orders of that Court also reviewed by the Supreme Court of Appeals in this case are reprinted in Appendix D, at pp. 49a-57a. The Orders of the County Commission of Webster County, West Virginia, sitting as a Board of Equalization and Review, which were reviewed by the Circuit Court, are reprinted in Appendix E, at pp. 58a-69a.

JURISDICTION

The judgment of the Supreme Court of Appeals of West Virginia was entered on July 17, 1987. The Supreme Court of Appeals denied a timely Petition for Rehearing in an Order entered on November 10, 1987. This Petition is filed within ninety days of the entry of that Order. *See* 28 U.S.C. § 2101(c). This Court has jurisdiction pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The provisions of the Constitution of West Virginia and the West Virginia Code that are involved in this case are: Constitution of West Virginia, Art. X, §§ 1 & 1b; W. Va. Code §§ 11-3-1 & 11-3-25; and W. Va. Code

§ 18-9A-11. These provisions of state law are set forth verbatim in Appendix F, at pp. 70a-87a.

STATEMENT OF THE CASE

In 1974 petitioner Allegheny Pittsburgh Coal Company, a Pennsylvania corporation, purchased numerous tracts of real estate located in Webster County, West Virginia. The real estate included approximately 7,374 acres in fee, as well as surface and mineral rights, or various combinations thereof. The purchase price for all the property was $24,624,500.00. *See* Appendix A, at p. 3a.

The total assessed value assigned to these tracts of real estate by the Assessor of Webster County in 1975 was $488,990.58. *See* Appendix D, at p. 30a. Effective in 1976, however, the County Assessor raised the assessments on petitioner's property to $12,312,250.00, or precisely 50% of the purchase price reflected in the deeds conveying the property to Allegheny Pittsburgh Coal. Appendix A, at p. 3a.[1] This reflected an increase in the assessed value of petitioner's property, and in petitioner's property taxes, of over 2,500 per cent.

In February, 1976 petitioner filed a protest to the proposed new assessments with the County Commission of Webster County, sitting as a "Board of Equalization and

---

[1] Before 1982, under W. Va. Code § 18-9A-11, county assessors were permitted to assess property at a range between 50 and 100% of its appraised value. In *Killen* v. *Logan County Commission*, —— W. Va. ——, 295 S.E.2d 689 (1982), the Supreme Court of Appeals held that this statute violated the State Constitution's guarantee of taxation that is "equal and uniform throughout the State." W. Va. Const., Art. X, § 1. In response to *Killen*, the legislature enacted the Property Tax Limitation and Homestead Exemption Amendment of 1982, which included Article X, § 1b of the West Virginia Constitution. Subsection A of that constitutional amendment requires uniform state-wide assessments of property at 60% of its true value. *See* Appendix F, at pp. 71a-72a.

Review."[2] Petitioner contended that the proposed new assessments were "arbitrary, capricious, inconsistent, unrealistic, excessive, unlawful, unconstitutional and unreasonable." Petitioner also stated that the proposed assessments reflected an "astronomical increase over the assessed valuations for 1975," and that the County Assessor "employed a systematic plan of assessing property whereby [petitioner's] assessments have been greatly increased and other property owners in the same class in the same location are intentionally omitted [from such increases]." Petitioner asked the County Commission to reduce the assessments on its property to a lawful level, equivalent to the assessments on comparable property within the county.

On February 27, 1976, following the taking of brief testimony, the County Commission, an elected body, entered an order finding "that the assessments as arrived at by the Assessor of Webster County were true and correct." Appendix E, at p. 58a. Petitioner then filed a Petition for Appeal from the County Commission's Order to the Circuit Court of Webster County, West Virginia.[3] That Petition urged that the assessments were excessive; that increased assessments had not been applied equally to all property of like kind and value in the county; that the increases over the 1975 assessments were arbitrary, capricious, and unlawful; and that the increases systematically discriminated against larger, corporate nonresident landowners.

During the years between 1977 and 1983 the County Assessor assessed petitioner's properties at the identical levels established in 1976. Each year petitioner sought

[2] W. Va. Code § 11-3-24 provides, in pertinent part, that "[t]he county commission shall annually, not later than the first day of February, meet for the purpose of reviewing and equalizing the assessment made by the assessor. . . ."

[3] Such appeals are authorized by W. Va. Code § 11-3-25. *See* Appendix F, at pp. 78a-80a.

review of the assessments by the elected County Commission. Each year the County Commission affirmed the propriety of the assessments, and petitioner appealed to the Circuit Court on the basis that the assessments were arbitrary, capricious, unreasonable, unlawful, and systematically discriminated against larger corporate and non-resident landowners without equalization. *See* Appendix E.

In July, 1982 petitioner sold the real estate and mineral interests at issue to East Kentucky Energy Corporation. The property was sold for a total of $29,842,500.00. In 1984, the County Assessor, taking account of this sale, assessed the property at $14,921,250.00, or 50% of the purchase price. Appendix A, at p. 3a. East Kentucky Energy Corporation sought review of the increased assessments for the years 1984 and 1985 through unsuccessful protests filed with the County Commission and subsequent appeals to the Circuit Court for Webster County.

All of the appeals concerning the assessments of petitioner's property, for the years 1976 through 1985, were consolidated by the Circuit Court and decided on November 22, 1985. That Court determined that the County Assessor had engaged in systematic discrimination against petitioner and its successor in interest in violation of the West Virginia Constitution and the Equal Protection Clause of the Fourteenth Amendment, and ordered a substantial reduction of the assessments for the years 1976 through 1985. *See* Appendix D.

The Circuit Court analyzed the increases in the assessed value of the petitioner's property on a parcel-by-parcel basis from 1975 through 1984. The Court also determined that a list of nine other properties located in Webster County (contained in Trial Exhibit B) were comparable in all respects to the properties at issue. Appendix D, at pp. 21a-22a.

With respect to the thirteen largest parcels of petitioner's property, the Court made the following comparison to the Exhibit B parcels:

> A computation of the weighted average per acre assessment of the Exhibit B comparables reveals that these parcels, consisting of a total of 8,398.9 acres,, were assessed at $27.38 per acre in 1975. In 1976 the weighted average per acre assessment of the Exhibit B comparables rose to $48.15 and in 1982, to $57.13 per acre.
>
> By 1984, the 8,398.9 acres making up the Exhibit B comparables had a total assessed value of $522,030.00, giving a weighted average per acre assessment of $62.15.
>
> While the weighted average per acre assessment of the thirteen largest parcels of Allegheny Pittsburgh-East Kentucky real estate was rising from $35.88, in 1975, to $1,688.64 in 1976, to $2,043.00 in 1984, the weighted average per acre assessments of the Exhibit B comparables, during the same years were $27.38, $48.15 and $62.15.

Appendix D, at p. 24a.

The Court also analyzed Trial Exhibit G, a schedule of fifty parcels of Webster County real estate, which the Court found were "substantially similar to petitioner's real estate." The weighted average per acre assessment for these parcels in 1975 was $27.95, which increased to $53.20 in 1982 and $58.31 in 1984. *Id.* at 24a-25a.

After breaking down the assessments for surface properties, fee simple estates, mineral rights, and coal, the Circuit Court found similar evidence of systematic discrimination in each category. It concluded: "It is evident from the comparison of the weighted. per acre, average asssessments of the petitioners' properties with the comparable properties listed in Exhibits B and G, whether the average assessments be of all the properties listed, without regard to the interest in real estate assessed, or

the average, per acre, assessment, according to the particular interest assessed, that the increase in assessment of t.. properties listed on Exhibit C [petitioner's properties] is substantially greater than the increased assessments of the Exhibit B and G properties." *Id.* at 26a. Indeed, while the assessments on petitioner's properties increased by over three thousand percent between 1975 and 1984, the increase in the assessments of comparable properties was only in the neighborhood of 100 percent.

The Circuit Court also found, based on the record before it, that there was a clear explanation for these discrepancies: the County Assessor based the assessments of petitioner's property solely on the values set forth in the most recent deeds conveying those properties, and deliberately failed to engage in any systematic effort to assess other properties in the county at their current fair market value. *Id.* at 26a-27a. Assessments on neighboring properties that had not changed hands for decades were still assessed based on their last sales price, with only modest periodic increases. Thus, while the assessments on petitioner's parcels increased at an average rate of $223.01 per acre per year over the nine years between 1975 and 1984, the assessments of comparable properties in Webster County were increased at an average rate of less than $4.00 per acre per year. *Id.* at 27a-28a.[4] The Assessor was aware of the resulting discrepancies, but asserted that the system was "uniform" because all *recently transferred* property was assessed at 50% (and later 60%) of the value described in the most recent deed. *Id.* at 27a.

The Circuit Court found as a fact that the County Assessor had never compared the various features of the

---

[4] The Circuit Court noted that if the Assessor continued to increase the assessed values of comparable properties at that rate it would take over 500 years before the assessments became equivalent to those on petitioner's properties (assuming that the assessments on petitioner's properties remained constant throughout that entire period). Appendix D, at p. 28a.

real estate to be assessed in Webster County, and had never procured, examined or considered reports of engineers, surveyors, timbermen, oil and gas developers, or real estate experts in assessing the county's real estate. Nor did the Assessor consider the present use or foreseeable economic development of the real estate, its size, shape, location or access to highways and utilities. *Id.* at 29a. Thus, the disparities in valuation demonstrated by the record could not be rationalized on the basis that petitioner's properties were intrinsically more valuable than the comparable properties in Exhibits B and G. Moreover, the Assessor had never considered any appraisals of real estate within the county, not even the appraisals required to be performed by the West Virginia State Tax Commissioner for the use of the County Assessors. *Id.* at 30a. In sum, "[t]he sole basis for the assessment of petitioners' real estate was, according to the assessor, the consideration described in petitioners' deeds." *Id.* at 29a.

The Circuit Court concluded, based on all the evidence, and a review of the pertinent statutes and precedent, that the Webster County Assessor and the County Commission had engaged in systematic and intentional discrimination against petitioner and other foreign corporations in their system of property tax assessment:

> Though the issue confronting this Court, the assessor, the County Commission and Board of Education of Webster County, has been portrayed in some news papers as an issue involving the wrongful, and unjustified, refusal of a foreign corporation to pay lawfully assessed and levied taxes, such is not the case[].
>
> The reluctance of the assessor and a Board of Equalization and Review to increase the real estate assessments, and consequently the real estate taxes, of friends and neighbors to a level comparable to the assessment and levy returned against the petitioners, East Kentucky and Allegheny Pittsburgh is understandable. So too is a refusal to lower the assessment of a foreign corporation, especially if to do so has been publicly represented as subjecting the county government and the school system to bankruptcy.
>
> Despite the outcry, however, the evidence presented clearly and convincingly establishes that the assessor, and the Board of Equalization and Review, in sustaining the questioned assessments, have, over a period of ten years, systematically and intentionally assessed the petitioners' real estate, and consequently levied taxes against petitioners' real estate, at a weighted rate per acre of from 5,672.56 to 6,511.06 percent in excess of the weighted rate per acre assessment applied to comparable real estate owned by others and located adjacent, contiguous or near that of the petitioners.
>
> The evidence further shows, and the Court so finds, that the inequality of the assessment of petitioners' real estate and that of comparable tracts has been repeatedly brought to the attention of the assessor and the Board of Equalization and Review over the ten year period involved.
>
> The evidence also demonstrates, and the Court finds, that as petitioners have repea[te]dly and consistently protested the inequality of the assessment of their real estate, as compared to the assessments of comparable real estate owned by others, the assessor and Board of Equalization and Review, have just as consistently and repeatedly refused to equalize petitioners[']assessment downward or to equalize the real estate assessments of others upward, though petitioners' have requested relief in both directions.

Appendix D, at pp. 40a-41a.

The Circuit Court held that such a system of assessment violated not only Article X, Section 1 of the West Virginia Constitution, but also the Equal Protection Clause of the Fourteenth Amendment:

> The evidence clearly demonstrates, and this Court finds, that though the assessor and Board of Equalization and Review were lawfully entitled to consider the consideration declared in petitioners' deeds, in determining their respective assessments, by intentionally and systematically, failing to either equalize assessments by increasing the assessed value of substantially similar property to the level of petitioners' assessments, or to equalize assessments by lowering petitioners' assessments to the level at which comparable real estate was being assessed, the assessor and Board of Equalization and Review violated the equal and uniform clause of Section 1, Article X of the West Virginia Constitution and the equal protection clause of the Fourteenth Amendment to the United States Constitution.

Id. at 42a-43a.

Finally, the Court determined, based on applicable decisions of this Court[5] and the West Virginia Supreme Court of Appeals, that it was required to equalize assessments by reducing the assessed values of petitioner's property to an average of approximately $360.00 per acre, which was the value that had been established for Webster County coal property in a guide published by the West Virginia State Tax Commissioner for the use of county assessors. *Id.* at 45a-46a.

The respondent, the County Commission of Webster County, appealed from the Circuit Court's Opinion and Order in this and related cases. The appeals were consolidated by order of the Circuit Court, Appendix D, at p. 57a, and the Supreme Court of Appeals reversed the Circuit Court's judgment, by a narrow three to two margin. In a per curiam opinion, the majority noted that petitioner and other similarly-situated property owners

[5] The Circuit Court's analysis of the federal equal protection issues included discussion of this Court's decision in *Sioux City Bridge Co.* v. *Dakota County*, 260 U.S. 441 (1923). Appendix D, at p. 43a. *See* pages 20-24 *infra*.

had argued both in the Circuit Court and on appeal that "the primary issue presented by this case is whether the assessments of their property and comparable properties are equal and uniform under the United States and West Virginia Constitutions." Appendix A, at p. 5a.

In responding to this argument, the majority first held that the assessor's use of deed consideration as a measure of value was appropriate, and did not of itself violate any constitutional principles. The Court then disposed of the question whether the assessor's failure to assess other similarly-situated properties at their current fair market value was discriminatory. Giving deference to the assessing officer, the Court concluded, without elaboration or explanation, "that the record does not support the trial court's ruling that the actions of the assessor and board of review constitute 'intentional and systematic' discrimination." *Id.* at 8a.[6]

The Court also opined that any objections petitioner had to the disparities in taxation created by the County Assessor's practices could be remedied through future petitions to the County Commission seeking to raise the assessments of all other property owners to comparable levels, pursuant to West Virginia Code §§ 11-3-25 and 18-9A-11. *Id.* at 9a. The Court reversed the judgment of the Circuit Court and remanded the case for reinstatement of the original assessments on petitioner's property for the years in question. *Id.* at 10a.[7]

[6] The majority, citing the earlier decision in *Kline* v. *McCloud*, —— W. Va. ——, 326 S.E.2d 715, 720 (1984), also observed that this case was "somewhat analogous" to decisions rejecting equal protection challenges to partial reappraisals of property within a taxing district, where the failure to reappraise all property during the same year results in temporary disparities in valuation. Appendix A, at pp. 9a-10a.

[7] For all years in question, petitioner, under protest, paid its taxes based on the discriminatory assessments ascribed by the Assessor and approved by the County Commission. The reduction in assessments ordered by the Circuit Court would have entitled

Justice Brotherton dissented in an opinion joined by Justice Neely. He stated that although it was true that petitioner's property had been assessed at its actual value, "the quest for true value [should not] override the *constitutional* requirement that taxation be equal and uniform." Appendix A, at p. 10a. Viewing the evidentiary record, Justice Brotherton concluded:

> There is neither equality nor uniformity when recent purchasers of property must pay tax based on current value while all other property owners pay tax based on low, outdated assessed values. Where, as in this case, the assessor has made only token attempts to bring similar property up to current value, the assessor is intentionally and systematically undervaluing the other property in violation of Article X, § 1 of the West Virginia Constitution.

Id.[8]

---

petitioner to a refund, exclusive of interest, totalling over $1.2 million.

[8] This case had earlier been before the Supreme Court of Appeals in a challenge to Circuit Court Judge Cline's authority to enjoin tax foreclosure sales of East Kentucky Energy Corporation's property resulting from its failure to pay the taxes levied by Webster County pending the outcome of its appeal to the Circuit Court challenging the validity of the assessments for 1983 through 1985. *State ex rel. Ayers* v. *Cline*, —— W. Va. ——, 342 S.E.2d 89 (1985). The majority in that case held that notwithstanding the potential invalidity of the assessments, Judge Cline was not empowered to enjoin the foreclosure sales, and East Kentucky Energy Corporation was required to pay the full taxes under protest until this case was resolved.

Justice Neely dissented from that decision on the basis that "the over-assessment is so large that it suggests a fraud," warranting injunctive relief. 342 S.E.2d at 96 (Neely, J., dissenting). Based on the record of these proceedings, Justice Neely observed that the assessments on petitioner's property, later purchased by East Kentucky Energy Corporation, were "wildly out of proportion." *Id.* at 95. He added:

> "The taxpayer in the present case has exhausted the statutory remedy and the gross over-assessment of the taxpayer's property indicates constructive fraud. The Assessor and the Board of Equalization and Review have, in sustaining the assessment over a period of ten years, systematically and intentionally assessed the taxpayer's real estate at a patently discriminatory rate. . . . Although the taxpayer conclusively demonstrated that the assessment was erroneous, the assessor and the board of equalization refused to consider the evidence offered by the taxpayer."

Id. at 96.

Petitioner and the other parties to the consolidated appeal filed a timely Petition for Rehearing, pursuant to West Virginia Supreme Court Rule 24(a). That Petition challenged the failure of the Supreme Court of Appeals to address adequately the record evidence of systematic, unconstitutional discrimination by the County Assessor and County Commission, and the Court's failure to address petitioner's federal constitutional arguments, which had been accepted by the Circuit Court as an independent ground of decision. The Petition for Rehearing also demonstrated that the remedy suggested by the Supreme Court of Appeals majority—that petitioner seek to have the assessments of other property owners raised to current values—had itself been declared constitutionally inadequate in several decisions of this Court. The Petition for Rehearing was denied in an Order dated November 10, 1987. *See* Appendix C.[9]

REASONS FOR GRANTING THE WRIT

The decision of the West Virginia Supreme Court of Appeals is blatantly inconsistent with controlling decisions of this Court in two respects: First, in its approach to what constitutes unconstitutional discrimination in the assessment of property; and second, in its analysis of the constitutional adequacy of the remedies supposedly avail-

---

[9] On November 17, 1987, the Supreme Court of Appeals entered an Order suspending execution of its judgment in order to permit petitioner and the other similarly-situated parties to present a Petition for a Writ of Certiorari to this Court.

able to petitioner under state law to challenge the proven disparities in Webster County real property assessments. The decision also is inconsistent with interpretations of the Fourteenth Amendment's limitations on state assessment practices that have been adopted by other state courts of last resort and federal courts of appeals.

In sum, there are ample reasons for this Court to grant plenary review to correct the West Virginia Supreme Court of Appeals' erroneous interpretation of federal constitutional principles, and to remedy the gross discrimination visited upon petitioner by the Webster County Assessor and by the respondent, the County Commission of Webster County, West Virginia. *See* Supreme Court Rule 17.1(b) & (c). In fact, the opinion below so clearly deviates from controlling principles that summary reversal is warranted under Supreme Court Rule 23.1.

A. The Decision Below Is In Conflict With This Court's Decisions Defining Unconstitutional Discrimination In The Assessment Of Property For Purposes Of Setting Local Property Taxes.

The West Virginia Supreme Court of Appeals majority decided, without explanation, that the proven discrimination in the assessed values of real property in Webster County was not unconstitutional because it was not "intentional and systematic." [10] In so holding the Court

[10] The Supreme Court of Appeals' decision was grounded expressly on the "equal and uniform" clause of the state constitution, W. Va. Const., Art. X, § 1. Federal equal protection analysis, however, also turns on the question whether discrimination in assessment is "intentional and systematic." The Circuit Court for Webster County held that the assessment practices at issue violated both the state and federal constitutional guarantees of equality, and the Supreme Court of Appeals' reversal of that holding necessarily rejected petitioner's argument that its rights under the Equal Protection Clause had been violated. *See, e.g., Chambers* v. *Mississippi*, 410 U.S. 284, 290 n.3 (1973). Moreover, in past decisions, the West Virginia Supreme Court of Appeals itself has equated the

deviated from controlling decisions of this Court defining what is meant by unconstitutional discrimination in the assessment process.

In *Sioux City Bridge Co.* v. *Dakota County*, 260 U.S. 441 (1923), this Court was faced with an equal protection challenge by the owner of a railroad bridge to the assessment practices of Dakota County, Nebraska. The owner offered testimony at trial demonstrating that while the bridge had been assessed on the basis of its full cost of construction, real estate and other improvements in the county had been assessed at approximately 50% of their fair market value. The Nebraska Supreme Court rejected the owner's argument that the resulting discrimination violated the Equal Protection Clause on the basis that prior state court decisions prevented taxpayers from seeking to lower their assessments when they could not prove that their own property had been assessed at a value in excess of its true value. This Court reversed the Nebraska Supreme Court and remanded for further proceedings. Central to Chief Justice Taft's opinion for the Court was the following distillation of earlier precedent:

> In the case of *Sunday Lake Iron Co.* v. *Wakefield*, 247 U.S. 350, 352, 353, this Court said:
>
> "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. *And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his*

requirements of the West Virginia Constitution's "equal and uniform" clause with those of the Fourteenth Amendment's Equal Protection Clause. *See Kline* v. *McCloud*, —— W. Va. ——, 326 S.E.2d 715, 724 (1984).

property. Raymond v. *Chicago Union Traction Co.*, 207 U.S. 20, 35, 37."

260 U.S. at 445 (emphasis added) (additional citations omitted).

Chief Justice Taft concluded that the allegations made by the owner of the bridge that the county assessor and local board of equalization had "intentionally and arbitrarily assessed [its] property at 100 per cent. of its true value and all the other real estate and its improvements in the county at 55 per cent.", *id.* at 445, if proven, would constitute a denial of equal protection under the Fourteenth Amendment. If the owner could show that its higher assessment did not result from "mere errors of judgment," but from "an intentional violation of the essential principle of practical uniformity," the owner would sustain its burden of proof. *Id.* at 447.

Eight years later, this Court further defined what was meant by intentional and systematic discrimination in property tax assessment. In *Cumberland Coal Co.* v. *Board of Revision*, 284 U.S. 23 (1931), the Court was confronted with a challenge to the assessment practices of the county assessor and county commission of Greene County, Pennsylvania. As in this case, *Cumberland Coal* involved the assessment of "coal property." The practice at issue was the assessor's valuation of all coal-bearing land (other than active coal mines) within given townships of the county at the same rate per acre. The Cumberland Coal Company launched a federal equal protection challenge to this system based on the indisputable fact that veins of coal located in areas that were remote and inaccessible were less valuable than coal deposits located in close proximity to rail or river transportation. The Supreme Court of Pennsylvania found that the challenged system of assessment did not violate the Equal Protection Clause. This Court reversed in a unanimous decision authored by Chief Justice Hughes.

First, the Court held that there could be "no question that the assessments under review were made pursuant to a deliberately adopted system." 284 U.S. at 25. Thus, the case did not involve "mere errors in judgment in following a proper method . . . but one where the challenged discrimination resulted from a plan of assessment which was none the less systematic and intentional because of belief [by the county officials] in its validity." *Id.* (citations omitted). Next, this Court squarely rejected the notion that the fact that all coal-bearing property was assessed uniformly at 50% of its "true value" salvaged the Greene County system:

> In applying [equal protection] principle[s], the fact that a uniform percentage of assigned values is used, cannot be regarded as important if, in assigning the values to which the percentage is applied, *a system is deliberately adopted which ignores differences in actual values* so that property in the same class as that of the complaining taxpayer is valued at the same figure (according to the unit of valuation, as for example, an acre) as the property of other owners which has an actual value admittedly higher. *Applying the same ratio to the same assigned values, when the actual values differ, creates the same disparity in effect as applying a different ratio to actual values when the latter are the same.*

Id. at 29 (emphasis added).

This case is on all fours with *Sioux City Bridge* and *Cumberland Coal*. As in *Sioux City Bridge*, the County Assessor of Webster County utilized a *system* which undervalued taxable property other than petitioner's, even though the other property was in all respects comparable.[11]

---

[11] This case does not involve disparities in assessment between different classes of property, in which the classifications adopted by the state will be upheld so long as they have a rational basis. *See, e.g., Charleston Federal Savings & Loan Ass'n* v. *Alderson*, 324 U.S.

As in *Cumberland Coal*, the record here establishes, and the Circuit Court found, that the discrimination in assessed values resulted from a *system* that had been adopted *deliberately*. The record reflects that the Webster County Assessor has for years ignored all relevant indicia of the true value of properties in the County, other than stated deed consideration. When a property within the County is bought and sold, and the assessed value raised as a result, no effort ever is made to adjust the assessed values of comparable properties lying adjacent to the conveyed property to reflect the demonstrated increase in their fair market value.[12]

The system adopted in Webster County ignores all evidence of current value for properties other than those recently conveyed. The result is an unfair and unconstitutional shifting of the property tax burden to those unfortunate enough to have recently purchased real

---

182, 190-91 (1945); *Nashville, C. & St. L. Ry.* v. *Browning*, 310 U.S. 362, 368-69 (1940). Nor is this a case in which petitioner is seeking "precise, scientific uniformity" in assessment. *See Allied Stores of Ohio, Inc.* v. *Bowers*, 358 U.S. 522, 527 (1959). *See generally* Comment, *The Road to Uniformity in Real Estate Taxation: Valuation and Appeal*, 124 U. Pa. L. Rev. 1418, 1420-21 (1976).

[12] Thus, contrary to the assertion of the Court of Appeals majority, *see* footnote 6 *supra*, the Webster County system cannot be analogized to cases in which state courts have rejected equal protection challenges to assessment systems that have permitted cyclical reappraisals for portions of all property within the taxing district or the immediate consideration of recent sales prices within set periods of cyclical reassessment. *See, e.g., Recanzone* v. *Nevada Tax Comm'n*, 92 Nev. 302, 550 P.2d 401 (1976); *Meyer* v. *Cuyahoga County Board of Revision*, 58 Ohio St.2d 328, 390 N.E.2d 796 (1979). Nor is this a case in which the assessor has made an "honest effort" to remedy the effects of disparate assessment following the adoption of a new method of valuation, as was involved in *Sunday Lake Iron Co.* v. *Wakefield*, 247 U.S. 350, 353 (1918). Here, gross disparities have continued unremedied for a period of ten years.

estate.[13] As might be expected, and as the Circuit Court here found, when review of property assessment lies in the hands of elected assessors and county commissioners, patterns of inequality tend to hurt newcomers to the county or corporate land-owners, and to serve the interests of the voting populace and the commissioners' friends and neighbors. Thus, the discrimination evidenced in this case is as offensive as it is irrational.[14]

The system of discrimination practiced in Webster County also has produced gross disparities in taxation—disparities much more dramatic than the inequitable systems found to be unconstitutional by this Court in *Cumberland Coal* and *Sioux City Bridge*. As determined by the Circuit Court, petitioner paid property taxes from 1976 through 1982 on an average per acre basis of over $1600.00, while property that is comparable in all respects (except for longevity of ownership) was being assessed at less than $50.00 per acre. In other words, petitioner's property was assessed at more than 30 times the value assigned to comparable, neighboring properties and petitioner was required to pay more than 30 times its fair share of the county's property tax burden. The Supreme Court of Appeals' conclusion that discrimina-

---

[13] This system is not necessarily unique to Webster County, West Virginia. It has been described in the literature as the "Welcome Stranger" pattern: "[t]he 'new' owner—the 'stranger'—will pay higher taxes proportionately than the owner of a long-held parcel who 'welcomes' the fact that he consequently pays lower taxes." Note, *Hellerstein v. Assessor of the Town of Islip: A Response to Inequities in Real Property Assessments in New York*, 27 Syr. L. Rev. 1045, 1061 (1976).

[14] The states, of course, are not free to tax property of nonresidents when they do not tax identical property owned by residents. *WHYY, Inc.* v. *Borough of Glassboro*, 393 U.S. 117 (1968); *Wheeling Steel Corp.* v. *Glander*, 337 U.S. 562 (1949). *Cf., Hooper* v. *Bernalillo County Assessor*, 472 U.S. 612 (1985) (finding an equal protection violation in a state tax exemption statute that afforded benefits to taxpayers based on the length of their residence in the state).

tion of such magnitude was unintentional and inadvertent is inexplicable. *See* Part C, *infra*; footnote 8 *supra*.[15]

The failure of the West Virginia Court to abide by the equal protection principles of *Cumberland Coal* and *Sioux City Bridge*, and its acquiescence in the blatantly offensive system of discrimination practiced by the officials of Webster County, fully warrants plenary review by this Court and reversal of the judgment below.

B. The Decision Below Is In Conflict With This Court's Decisions Regarding The Constitutional Adequacy Of Purported Remedies Under State Law For Discrimination In Property Tax Assessments.

The majority of the West Virginia Supreme Court of Appeals blithely asserted that state law affords a remedy for "[a]ny dispute [petitioner has] with the assessments of other landowners in Webster County . . . ." Appendix A, at p. 8a. That remedy, outlined in prior West Virginia decisions, is for petitioner to seek to have the Webster County Assessor raise the assessments of neighboring property owners to current values, and to appeal to the Circuit Court if the Assessor and County Commission fail to do their duty. *Id.* at 8a-9a.

In announcing the availability of this "remedy," the majority ignored the finding of the Circuit Court that

[15] One commentator has observed that "discriminatory intent [in property tax assessment] may be implied from the magnitude of the discrimination." Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 Tex. L. Rev. 885, 910 n.110 (1973). *See also* Note, *Inequality in Property Tax Assessments: New Cures For An Old Ill*, 75 Harv. L. Rev. 1374, 1375 (1962) ("to run afoul of the equal protection clause . . . the discrimination must be more than incidental"). This is not a case, such as that presented in *Chicago G. W. Ry.* v. *Kendall*, 266 U.S. 94, 100 (1924), in which the Court could fairly conclude, after examining the evidence, that the disparities in valuation were within a range of reasonableness, and hence not "arbitrary and unconscionable."

petitioner and its successor in interest had repeatedly, for ten years, sought action by the Assessor and the County Commission to remedy the undervaluation of neighboring properties, and that "the assessor and Board of Equalization and Review, have just as consistently and repeatedly refused to equalize petitioners[']' assessment downward or to equalize the real estate assessments of others upward, though petitioners' have requested relief in both directions." Appendix D, at p. 41a. The majority also ignored Circuit Judge Cline's observation that a failure to reduce petitioner's assessment in light of the evidence would be inconsistent with this Court's decision in *Sioux City Bridge*, *supra*. *Id.* at 43a.

In *Sioux City Bridge*, the Nebraska Supreme Court, like the West Virginia Court in this case, held that "'when property is assessed at its true value, and other property in the district is assessed below its true value, the proper remedy is to have the property assessed below its true value raised, rather than to have property assessed at its true value reduced.'" 260 U.S. at 444. After analyzing prior federal equal protection decisions, this Court flatly rejected that approach:

> The conclusion in these and other federal authorities is that such a result as that reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly impossible for him by any judicial proceeding to secure an increase in the assessment of the great mass of underassessed property in the taxing district. This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required

> by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.

Id. at 446.

Sioux City Bridge's holding on the precise remedy that the Equal Protection Clause requires in an undervaluation case is not an isolated decision. In *Cumberland Coal*, *supra*, 284 U.S. at 29, this Court repeated Chief Justice Taft's holding quoted above, and rejected the view of the Pennsylvania Supreme Court that the owners of coal-bearing land had no standing to complain about the assessments of other properties so long as their own land was not assessed in excess of its fair market value. *See* 284 U.S. at 28.

That same Term, the "remedy" espoused by the Supreme Court of Appeals of West Virginia in this case again was rejected by this Court. In *Iowa-Des Moines National Bank* v. *Bennett*, 284 U.S. 239 (1931), the Court upheld the right of the petitioners to obtain refunds of state property taxes based on discrimination in the tax rates applied to shares of stock in national banks as compared to the rates levied against shares of competing domestic corporations. Justice Brandeis, speaking for a unanimous Court, observed that "[i]t may be assumed that all ground for a claim for refund would have fallen if the State, promptly upon discovery of the discrimination, had removed it by collecting the additional taxes from the favored competitors." 284 U.S. at 247. But, where the party before the Court invokes his right to equal treatment under the Fourteenth Amendment, that remedy does not suffice:

> [I]t is well settled that a taxpayer who has been subjected to discriminatory taxation through the favoring of others in violation of federal law, cannot be required himself to assume the burden of seeking an increase of the taxes which the others should have paid. . . . Nor may he be remitted to the necessity of awaiting such action by the state officials upon their own initiative. . . .
>
> The petitioners are entitled to obtain in these suits refund of the excess of taxes exacted from them.

Id. (citations omitted).

These principles were reaffirmed, again by a unanimous Court, in *Township of Hillsborough* v. *Cromwell*, 326 U.S. 620 (1946). In that case, property owners sued in federal court for a declaratory judgment that the assessments on intangible personal property by the Collector of Hillsborough Township, Somerset County, New Jersey were null and void because of discriminatory treatment. The issue before this Court turned in part on whether New Jersey courts provided a "plain, speedy and efficient" remedy to the claimed discrimination, such that federal jurisdiction could not be invoked, pursuant to the Johnson Act, 28 U.S.C. § 1341.[16]

This Court concluded that the remedy afforded to a property taxpayer in New Jersey was "not adequate to protect [the taxpayer's] rights under the federal Constitution." 326 U.S. at 624. The basis for that holding was that the state court remedy, like the remedy proposed by the West Virginia Court in this case, was for the taxpayer to apply for an increase in the assessments of other owners whose property was undervalued. *Id.* Citing the earlier decisions in *Sioux City Bridge*, *Cumberland Coal*, and *Iowa-Des Moines National Bank*, Justice Douglas observed that "[t]he constitutional requirement . . . is not satisfied if a State does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of the class." *Id.* at 623.

---

[16] When *Township of Hillsborough* was decided the Johnson Act was codified at 28 U.S.C. § 41(1) (1940 ed.). *See* 326 U.S. at 623.

The majority of the West Virginia Supreme Court of Appeals thus has rendered a decision that effectively ignores four unanimous, controlling decisions of this Court authored by Chief Justices Taft and Hughes, and Justices Brandeis and Douglas. This Court should grant plenary review in order to correct the state court's failure to apply fundamental constitutional principles, and reverse the judgment below.

C. The Decision Below Is In Conflict With Decisions Of Federal Courts Of Appeals And The Courts Of Last Resort Of Other States.

The failure of the West Virginia Court of Appeals' majority to affirm the Circuit Court's finding of "intentional and systematic" discrimination cannot be squared with numerous decisions of the federal courts of appeals and the highest courts of other states. Those courts have adhered to this Court's decisions described in Parts A and B above, and struck down as discriminatory systems of assessment that produced grossly disparate valuations for comparable properties of the same class.

In *In Re Chicago Rys. Co.*, 175 F.2d 282 (7th Cir.), *cert. denied sub nom., Illinois* v. *Sullivan*, 338 U.S. 850 (1949), the Court of Appeals held that where the State of Illinois' assessors reduced the value of tangible personal property owned by other corporate taxpayers to 70% of full cash value, but assessed the railway company's property at full value, the state officials violated both Illinois law and the Equal Protection Clause. In reaching this conclusion, the Court relied on Illinois decisions holding that "overvaluation of property may be so excessive and made under such circumstances as to justify the conclusion that it was not honestly made and was known to be excessive." 175 F.2d at 291. Relying on *Township of Hillsborough, supra*, the Court concluded that such overvaluation also deprives the taxpayer of the equal treatment required by the Fourteenth Amendment. *Id.*

In *Louisville & Nashville R.R. Co.* v. *Public Service Comm'n*, 631 F.2d 426 (6th Cir. 1980), *cert. denied*, 450 U.S. 959 (1981), the Court of Appeals affirmed a finding of unconstitutional discrimination in the Tennessee property tax assessment system under which "public utility" property was assessed at 10 percent of full value while other properties were assessed on a statewide average ratio basis of 63 percent.[17]

Most of the more recent cases involving equal protection challenges to state property tax assessments have been decided in the state courts, and many of these decisions have turned on provisions of state law requiring equal and uniform assessments, rather than the federal Constitution.[18] But in *Shoppers' World, Inc.* v. *Board of Assessors of Framingham*, 348 Mass. 366, 203 N.E.2d 811 (1965), the Supreme Judicial Court of Massachusetts held that proof by a taxpayer that substantially all properties in a town were assessed at 45% of full value, while its property was assessed at a higher percentage of full value, could suffice to make out a claim of unconstitutional discrimination under *Sioux City Bridge, supra.* An "inference" of a discriminatory scheme of assessment would be created, according to the Massachusetts court, "[i]f the taxpayer establishes improper assessment of [a] number of [local] properties (at less

---

[17] *See also Louisville & Nashville R.R. Co.* v. *Public Service Comm'n of Tennessee*, 389 F.2d 247 (6th Cir. 1968), *aff'g*, 249 F. Supp. 894 (M.D. Tenn. 1966) (finding equal protection violation in systematic and long-standing policy of state to assess railroad property at a higher percentage of fair market value than the percentage applied by local county assessors in valuing other property).

[18] This is due, in large measure, to the restriction against federal actions seeking to enjoin the assessment, levy or collection of any state taxes, which is contained in the Johnson Act, 28 U.S.C. § 1341. State court decisions requiring equalization of assessments under state law are summarized in Lesnick, *Does Full Value Mean Full Value?*, 5 Hofstra L. Rev. 235 (1977).

than fair cash value and on a basis discriminatory against the taxpayer) . . . ." 348 Mass. at 377, 203 N.E.2d at 820. In the earlier decision of *Bettigole* v. *Assessors of Springfield*, 343 Mass. 223, 231, 178 N.E.2d 10, 15 (1961), the same court held that disparities in assessments of like property within a city, "rising to a maximum of the difference between 50% and 85% of fair cash value, 'was deliberate and intentional' . . . ."

The Supreme Court of Arizona sustained the sufficiency of a federal equal protection challenge to local assessment practices in *McCluskey v. Sparks*, 80 Ariz. 15, 291 P.2d 791 (1955). The complaint in that case alleged that the assessed value of plaintiffs' properties were increased from 300 to 1600 percent in a given year, while the county assessor's office did not increase the assessments on comparable properties. The Arizona court, after analyzing this Court's decisions in *Sioux City Bridge*, *Cumberland Coal* and other cases, held that the allegations of the complaint, if true, would make out a valid equal protection claim. "Assessing officials cannot systematically and intentionally use different rules for measuring the value of property of the same class if by the use thereof great inequality results." 80 Ariz. at 20, 291 P.2d at 794. The failure of the local board of equalization to correct the alleged inequities would result, according to the court, in "a legal fraud or the equivalent thereof upon the plaintiffs." *Id.* Following remand for trial, the Supreme Court affirmed the trial court's finding of intentional and systematic discrimination in the assessment process: "there can be no question from all the evidence but that most of the properties in the county of like class as those of plaintiffs were assessed at values arrived at by an entirely different method than that used in fixing the value of plaintiffs' properties." *Sparks* v. *McCluskey*, 84 Ariz. 283, 286, 327 P.2d 295, 296 (1958).

Recently, the Supreme Court of Missouri engaged in an extensive analysis of the requirements of the Equal Protection Clause in the tax assessment context. *See Savage* v. *State Tax Comm'n of Missouri*, 722 S.W.2d 72 (Mo. 1986) (en banc). That Court, in earlier decisions, had announced that "grossly excessive" disparities in assessment which are "entirely inconsistent with an honest exercise of judgment" by the assessor may give rise to a finding of "intentional and systematic" discrimination in violation of the Equal Protection Clause. 722 S.W.2d at 78-79 (citing *Cupples Hesse Corp.* v. *State Tax Comm'n*, 329 S.W.2d 696, 700 (Mo. 1959)). In the *Savage* case, the Missouri court found that a disparity between the assessment of the plaintiffs' properties at 33% of full value and the average assessment within the county at approximately 20% of full value was "so grossly excessive as to be entirely inconsistent with an honest exercise of judgment and has the effect of intentional discrimination." 722 S.W.2d at 79.

The Circuit Court's detailed findings of fact in this case, outlining the methods employed by the Webster County Assessor and the resulting disparities in assessment, amply supported its conclusion that the Assessor and the County Commission had engaged in systematic and intentional discrimination. The findings that comparable properties had been assessed on a per acre average of roughly 3% of the assessments ascribed to petitioner's property, and that the Assessor and Commission had failed to correct this disparity over the course of a decade, cannot be explained on any other basis. The reversal of the Circuit Court's judgment by the Supreme Court of Appeals cannot be reconciled with this Court's precedents, nor with the treatment afforded to similar equal protection claims in the state and federal appellate decisions described above.

CONCLUSION

For the reasons stated herein, this Petition for Writ of Certiorari should be granted. Because of the blatant constitutional errors reflected in the decision of the West Virginia Supreme Court of Appeals, and its clear failure to follow controlling decisions of this Court as set forth in Parts A and B above, petitioners suggest that summary reversal and reinstatement of the Circuit Court's Order may be appropriate pursuant to this Court's Rule 23.1. *See Florida Department of Health & Rehabilitative Services* v. *Florida Nursing Home Ass'n*, 450 U.S. 147 (1981) (per curiam decision granting a writ of certiorari and reversing decision below because of its clear inconsistency with this Court's decision in *Edelman* v. *Jordan*, 415 U.S. 651 (1974)).

Respectfully submitted,

WILLIAM JAMES MURPHY
Counsel of Record
ROBERT T. SHAFFER, III
MURPHY & MCDANIEL
118 West Mulberry Street
Baltimore, Maryland 21201
(301) 685-3810
Counsel for Petitioner

Of Counsel:
ERNEST V. MORTON, JR.
210 Back Fork Street
Webster Springs, West Virginia
26288
(301) 847-5256

February 4, 1988

APPENDICES

APPENDIX A

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 17315

IN RE 1975 TAX ASSESSMENTS
AGAINST ONEIDA COAL CO., *et al.*

July 17, 1987

Dissenting Opinion Sept. 18, 1987

Syllabus by the Court

1. "The equal and uniform clause of Section 1 of Article X of the West Virginia Constitution requires a taxpayer whose property is assessed at true and actual value to show more than the fact that other property is valued at less than true and actual value. To obtain relief, he must prove that the undervaluation was intentional and systematic." Syl. pt. 1, *Kline v. McCloud*, —— W.Va. ——, 326 S.E.2d 715 (1984).

2. "The price paid for property in an arm's length transaction, while not conclusive, is relevant evidence of its true and actual value. Such evidence may not be rejected in favor of a Tax Commissioner's old appraisal." Syl. pt. 2, *Kline v. McCloud*, —— W.Va. ——, 326 S.E. 2d 715 (1984).

3. "The term 'value' as used in article 10, section 1 of the West Virginia Constitution, means the 'worth in

money' of a piece of property-its market value." Syl. pt. 3, *Killen v. Logan County Commission*, —— W.Va. ——, 295 S.E.2d 689 (1982).

4. "It is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct. The burden of showing an assessment to be erroneous is, of course, upon the taxpayer, and proof of such fact must be clear." Syl. pt. 7, *In re Tax Assessments Against Pocahontas Land Co.*, —— W.Va. ——, 303 S.E.2d 691 (1983).

Jack Alsop, P.A., Webster Springs, for Webster Co. Comm.

Ernest V. Morton, Jr., Webster Springs, for Allegheny-Pitt.

Dan O. Callaghan, Richwood, for Allegheny-Pitt Coal & East Ky. Energy.

W.T. Weber, Jr., Weston, for Shamrock Coal Co. and Oneida Coal.

PER CURIAM:

This is an appeal by the County Commission of Webster County from orders entered by the Circuit Court of Webster County reducing the assessed valuation of certain real estate for the purpose of *ad valorem* taxation. By agreement of the parties, several cases involving the same issue of tax assessments based on deed values for different appellees have been consolidated for purposes of this appeal.

The circuit court issued the rulings now before us in cases brought by several landowners challenging the valuation placed on their respective properties by the Assessor for Webster County (hereinafter assessor) and upheld by the County Commission of Webster County sitting as the Board of Equalization and Review[1] (hereinafter board of review) for the tax years 1976 through 1986. The appellee taxpayers are the following coal corporations who own both fee and mineral estates in Webster County: Allegheny-Pittsburgh Coal Company (hereinafter Allegheny-Pittsburgh) for valuations during the years 1976 through 1983; Shamrock Coal Company, Inc. (hereinafter Shamrock) and Oneida Coal Company, Inc. (hereinafter Oneida) for valuations during 1981 through 1986; and East Kentucky Energy Corporation (hereinafter East Ky. Energy) for valuations during the years 1984 through 1986.

Allegheny-Pittsburgh owned 7,374 acres of property in fee, surface, minerals, or various combinations of these estates, which it purchased in September, 1974, for a total consideration of $24,624,500, as shown by the declaration of consideration of value in the various deeds. For the tax years 1976 through 1983 this property was assessed annually at $12,312,250, or 50% of the purchase price listed as consideration in the original deeds.[2]

On July 15, 1982, Allegheny-Pittsburgh sold its property in Webster County to appellee, East Ky. Energy, for $29,842,500, and the annual assessed valuation thereafter was $14,921,250, which represented 50% of the purchase price as contained in the 1982 deed.

---

[1] *W.Va.Code*, 11-3-24 [1979] provides: "The county commission shall annually, not later than the first day of February, meet for the purpose of reviewing and equalizing the assessment made by the assessor."

[2] "*W.Va.Code*, 18-9A-11 (1972) read *in pari materia* with *W.Va. Code*, 11-3-1 (1972) gives the assessor discretion to set the assessed value of property between fifty and one hundred percent of the appraised value." *In re Assessment of U.S. Steel*, 165 W.Va. 373, 377, 268 S.E.2d 128, 131 (1980). In 1981, *W.Va.Code*, 18-9A-11(f) was amended to provide that beginning July 1, 1981, the assessed valuation would be not less than 60 percent of the appraised valuation. *See also* note 3, *infra*. There is no allegation in the present case that the assessor applied different *rates* of assessment to the appellees' property as occurred in *U.S. Steel, supra*.

Appellees Oneida and Shamrock are wholly owned subsidiaries of Elk River Resources, Inc. On May 12, 1981, Shamrock conveyed 7,783 acres of coal in Webster County to Oneida without consideration as a result of the companies' corporate affiliation. The assessment on this property for tax years 1981 through 1986 was derived from the purchase price paid when Shamrock acquired the property on December 21, 1977, from Preston W. Carroll and his wife, as well as other properties situate in Braxton and Nicholas Counties. The assessor appraised the proportionate Webster County share of this conveyance at $5,867,600 and the assessed value at $2,933,800 or 50% of the appraisal value.

The appellees appealed the valuations by the board of review to the circuit court on the grounds that the assessments violated the equal and uniform clause of article X, section 1 of the West Virginia Constitution, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The appellees charged that the practice by the assessor and board of review of basing assessments on the consideration recited in deeds of conveyance intentionally discriminates against landowners who recently purchased property.

Article 10, section 1 of the West Virginia Constitution provides that "[s]ubject to the exceptions in this section contained, taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law." *W.Va.Code*, 11-3-1 holds that:

> All property shall be assessed annually as of the first day of July at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale. . . .

In syllabus point 3 of *Killen v. Logan County Commission*, —— W.Va. ——, 295 S.E.2d 689 (1982), we held that "[t]he term 'value,' as used in article 10, section 1 of the West Virginia Constitution, means the 'worth of money' of a piece of property-its market value." [3]

The appellees presented expert evidence that the true and actual value of their property is lower than the purchase price stated in the deeds of conveyance. The appellees are more concerned, however, with the undervaluation of comparable Webster County properties. The appellees therefore argue that the primary issue presented by this case is whether the assessments of their property and comparable properties are equal and uniform under the United States and West Virginia Constitutions. The appellees contend that the board of review should have adopted the valuation of coal appraisals recommended in 1975 by the State Tax Commissioner of $360 per acre for coal and $300 per acre for surface, or even lower figures presented by their experts.

For the coal property owned by Shamrock and then Oneida, proof was offered by witnesses that in 1984 the appraised value was $119 per acre for an aggregate value of $926,177. Appellee Oneida now asserts by cross assignment of error that the true and actual value is $119 per acre and not $360 per acre as recommended by the State Tax Commissioner and adopted by the circuit court below.

Appellees, Allegheny-Pittsburgh and East Ky. Energy, challenged the assessor's valuations by presenting evidence of the assessed value of comparable properties. Based on

---

[3] Prior to *Killen*, assessors relied on *W.Va.Code*, 18-9A-11, to assess property at less than the true and actual value. After *Killen*, Section 1b of Article X to the West Virginia Constitution was adopted which set the assessed value of property at 60 percent of its true value. Under this section, the percentage of assessed value can be altered by two-thirds of the members elected to each Legislative House.

this comparison, East Ky. Energy contended before the board of review and circuit court that the appraisal value for all of its Webster County property should be $1,049,872.43 or $142.37 per acre, instead of the $29,842,-500 price paid to Allegheny-Pittsburgh in 1982. East Ky. Energy has not appealed the circuit court's final ruling regarding the value of its coal and surface property.

It was the policy of the assessor's office during the relevant time period to assess all recently transferred property on the basis of 50 percent of the declaration of consideration of value. There appears to be no dispute that this method was uniformly followed for all such property. With respect to property which had not been recently conveyed, the assessor testified that the assessed values were raised by ten per cent in the years 1976, 1982 and 1984. The appellees contend that the assessor failed to equally and uniformly apply the ten per cent increase to all relevant property.

The appellant county commission, which adopted the assessor's valuations of all appellees' property while sitting as the board of review, argued on appeal to the circuit court and in their petition now before this Court that the tax assessments reflect the "true and actual" value of appellees' property, and that the assessor's method of valuation was valid and was uniformly applied.

The trial court ruled that the assessor and board of review, while justified in making the initial assessments of appellees' property, based on the actual purchase price, subsequently violated the equal and uniform clause of article X, section 1 by failing either to raise the assessments of comparable property to appellee's level, or to lower appellee's assessments to the level of substantially similar coal property. The court chose to lower the appellee's assessment by ordering the substitution of the tax commissioner's appraisal value of $360 per acre for coal property and $300 per acre for surface property.

In *Kline v. McCloud*, —— W.Va. ——, 326 S.E.2d 715 (1984), the taxpayer, Westvaco Corporation, raised the same argument asserted by the appellees: use of recent deed values would violate the equal and uniform taxation clause of our State Constitution, *W.Va. Const.*, art. X, section 1. The petition in *Kline*, *supra*, was brought by citizens and taxpayers in Randolph County who had tried to have the appraisal of property owned by Westvaco Corporation raised to reflect the actual purchase price. In that case the Assessor of Randolph County testified that he routinely used the 1965 State Tax Department appraisal, regardless of sale price, in order to maintain equality of taxation.

In *Kline* we reversed the trial court holding that property cannot be appraised at a value higher than the State Tax Commissioner's appraisal and established the following rule in syllabus point 2: "The price paid for property in an arm's length transaction, while not conclusive, is relevant evidence of its true and actual value. Such evidence may not be rejected in favor of a Tax Commissioner's old appraisal."

The trial court in the case before us acknowledged that an assessment based on the purchase price paid by the appellees could be properly sustained under the rationale in syllabus point 2 of *Kline*, *supra*. Further, the appellees do not contend that the purchases of their respective properties were not "arm's length transactions." We, therefore, hold that the consideration paid by the appellees represents the "true and actual value" of their respective properties as set by the board of review.

We also held in syllabus point 1 of *Kline* that:

> The equal and uniform clause of Section 1 of Article X of the West Virginia Constitution requires a taxpayer whose property is assessed at true and actual value to show more than the fact that other property is valued at less than true and actual value.

> To obtain relief, he must prove that the undervaluation was intentional and systematic.

The remaining question presented by this case is whether the undervaluation of other property in Webster County was "intentional and systematic" as argued by the appellees. The court below held that the failure of the assessor and board of review to either raise other taxpayers' assessments or lower the appellees' property valuation constituted discriminatory treatment of the appellees which justified a substantial reduction of the appellees' appraisal.

"It is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct. The burden of showing an assessment to be erroneous is, of course, upon the taxpayer, and proof of such fact must be clear." Syl. pt. 7, *In re Tax Assessments Against Pocahontas Land Co.*, —— W.Va. ——, 303 S.E.2d 691 (1983).

We find that the record does not support the trial court's ruling that the actions of the assessor and board of review constitute "intentional and systematic" discrimination. The assessments based upon the price paid for the property in arm's length transactions are an appropriate measure of the "true and actual value" of appellees' property.

The uniform use of recent deed values as the basis for appraising property subject to *ad valorem* taxation does not violate *W.Va. Const.*, art. X, § 1. Any dispute the appellees have with the assessments of other landowners in Webster County may be presented to the board of review. "[*A*]*ny* person who is aggrieved by *any* assessment shall have the right to appeal that assessment (if they have appeared and contested the valuation before the Board of Equalization and Review)." *Tug Valley Recovery Center, Inc. v. Mingo County Commission*, 164 W.Va. 94, 101, 261 S.E.2d 165, 170 (1979). (emphasis in original).

In *Tug Valley, supra*, we found support for this position in both *W.Va. Code*, 11-3-25, which holds, in part:

> Any person claiming to be aggrieved by any assessment in any land or personal property book of any county who shall have appeared and contested the valuation or whose assessment has been raised by the county court [county commission] above the assessment fixed by the assessor, or who contested the classification or taxability of his property may, at any time up to tnirty days after the adjournment of the county court [county commission], apply for relief to the circuit court of the county in which such books are made out. . . .

and *W.Va.Code*, 18-9A-11 which holds in part:

> In the event the county commission shall fail or refuse to make the reallocation of levies as provided for herein, the county board of education, the tax commissioner, the state board, or any other interested party, shall have the right to enforce the same by writ of mandamus in any court of competent jurisdiction.

We concluded that "[t]his language makes it clear that 'any interested party' is allowed to compel proper assessment of all real estate in his home county. . . ." *Tug Valley, supra*, at 101, 261 S.E.2d at 170.

We addressed the very question raised by appellees in *Killen, supra*, and held at ——, 295 S.E.2d at 709: "In the future, taxpayers who claim that they are being overassessed in relation to other taxpayers may not have their assessments reduced *as long as their property is valued at market value.* Instead, they should seek to have the assessments of other taxpayers raised to market value." (emphasis added).

Finally, we stated in reference to the facts in *Kline, supra*, at ——, 326 S.E.2d at 720:

> The present case is somewhat analogous to those situations where an assessor makes a partial reappraisal of property which results in such property receiving a higher value than other property or there is disparate valuation between tax districts. Courts have rather uniformly rejected equal protection and uniformity of taxation arguments in such cases.

Based on the above principles, we find no merit in Oneida's cross assignment of error and reverse the judgment of the Circuit Court of Webster County and remand this case for reinstatement of the tax assessments on appellees' property previously set by the board of review.

Reversed and remanded.

BROTHERTON, Justice, dissenting:

It appears to me that the tail is now wagging the dog in West Virginia property taxation. Our statute requires a county assessor to assess property at its true and actual value, and I would go beyond Syllabus Point 2 and say that the price paid for property in an arm's length transaction is the *best* evidence of actual value. I would not, however, let the quest for true value override the *constitutional* requirement that taxation be equal and uniform. There is neither equality nor uniformity when recent purchasers of property must pay tax based on current value while all other property owners pay tax based on low, outdated assessed values. Where, as in this case, the assessor has made only token attempts to bring similar property up to current value, the assessor is intentionally and systematically undervaluing the other property in violation of Article X, § 1 of the West Virginia Constitution.

While I recognize the need for improving the educational system in West Virginia, this improvement cannot constitutionally be achieved at the expense of a few taxpayers. Appraisal of all property at its true and actual

value must be achieved within the bounds of the "equal and uniform" provision of the constitution. The legislature has required full value assessment, W.Va. Code § 11-3-1 (1983), and the State Tax Commissioner is nearing completion of a statewide reappraisal program. This Court should not interfere in this process, which is legislative and administrative in nature. In my opinion, the holding in this case undermines any effort by the State Tax Commissioner to set uniform values, especially for mineral lands.

More fundamental than interference with the administrative process, however, is the majority's condonation of the discriminatory "reappraisal method" in this case. My legal objections to this system were more fully set out by Justice Neely in his dissent to the opinion in *Kline v. McCloud*, —— W.Va. ——, 326 S.E.2d 715 (1984). For these reasons, I respectfully dissent, and I am authorized to say that Justice Neely joins me.

APPENDIX B

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 17th day of July, 1987, the following order was made and entered.

No. 17315

In Re: TAX ASSESSMENTS AGAINST ONEIDA COAL COMPANY, INC.; SHAMROCK COAL COMPANY, INC.; EAST KENTUCKY ENERGY CORPORATION; ALLEGHENY-PITTSBURGH COAL COMPANY

Upon an appeal from a judgment of the Circuit Court of Webster County rendered on November 22, 1985, January 31, 1986, February 20, 1986 and March 21, 1986.

The Court having maturely considered the motion for leave to move to reverse, and the argument and briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that there is error in said judgments. It is therefore considered and ordered by the Court that the judgments of the Circuit Court of Webster County rendered on November 22, 1985, January 31, 1986, February 20, 1986 and March 21, 1986, be, and the same are hereby, set aside, reversed and annulled, and that the appellant do recover of and from the appellees its costs about the prosecution of his appeal in

this Court in this behalf expended. AND this action is remanded to the Circuit Court of Webster County for reinstatement of the tax assessments on appellees' property previously set by the board of review, and further in accordance with the principles stated and directions given in the written opinion aforesaid and further according to law; all of which is ordered to be certified to the Circuit Court of Webster County.

The syilabus of points adjudicated, prefixed to the written opinion prepared Per Curiam, was concurred in by Chief Justice McGraw, and Justices Neely, Miller, and McHugh. Justice Brotherton dissents and would affirm the trial judge.

A True Copy

Attest: /s/ Ancil G. Ramey
Clerk
Supreme Court of Appeals

APPENDIX C

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 10th day of November, 1987, the following order was made and entered.

No. 17315

In Re: TAX ASSESSMENTS AGAINST ONEIDA COAL COMPANY, INC.; SHAMROCK COAL COMPANY, INC.; EAST KENTUCKY ENERGY CORPORATION; ALLEGHENY-PITTSBURGH COAL COMPANY

The Court having maturely considered the petition for rehearing and reargument filed in the captioned case is of opinion to, and doth hereby deny the prayer of the petition and doth order that the final order entered herein be made absolute and certified as heretofore directed.

A True Copy

Attest: /s/ Ancil G. Ramey
Clerk
Supreme Court of Appeals

APPENDIX D

IN THE CIRCUIT COURT OF
WEBSTER COUNTY, WEST VIRGINIA

IN RE:

Civil Action #2532

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #78-C-33

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #79-C-38

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #80-C-59

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #81-C-39

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #82-MISC-26

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #84-MSC-8

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #84-MSC-9

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #84-MSC-8

EAST KENTUCKY ENERGY CORPORATION,

Civil Action #84-MSC-9

EAST KENTUCKY ENERGY CORPORATION,

and

Civil Action #85-MSC-20

EAST KENTUCKY ENERGY CORPORATION

ORDER

These matters, consolidated before this Court by agreement of the parties, came before the undersigned upon appeal by the petitioners, corporate land owners and real estate taxpayers in Webster County, West Virginia, from the decision and order of the County Commission of Webster County, sitting as the Board of Equalization and Review, by which decision and order the assessment of petitioners' interest in the subject tracts and parcels of real estate, as fixed by the Assessor of Webster County, for the tax years in question was sustained.

The real estate in question consists of various tracts and parcels of surface, fee and mineral estate situate in Webster County, West Virginia. The various parcels of real estate of each of the petitioners, as will hereinafter appear, when combined as single parcels make up large boundaries.

Although the real estate of each of these petitioners is not identical to that of all other real estate in Webster County, it appears that petitioners' real estate is substantially similar to the real estate of the others in topography, location, access, development, mineral content and forestation, and that the petitioners' real estate is substantially similar to adjacent and contiguous tracts and parcels of real estate owned by others.

The petitioners, individually and collectively, contend that their real estate has been systematically valued,

assessed and taxed in violation of the "equal and uniform" requirement of Article X, Section 1 of the Constitution of West Virginia. They further maintain that, though the real estate owned by them is substantially the same as adjacent and contiguous real estate owned by others, the Assessor and the Board of Equalization and Review, by sustaining the assessment of petitioners' real estate, have systematically valued, assessed and taxed petitioners' real estate at a rate well in excess of the rate applied to adjacent and contiguous owners.

The petitioners assert that the rate of their respective valuations and assessments not only exceeds the rate of assessment applied to the real estate of adjoining and contiguous owners, but is also valued at approximately double the per acre value established by the 1975 appraisement of the State Tax Commissioner of West Virginia for substantially similar Webster County real estate. They further maintain that while their real estate is valued, and consequently assessed and taxed, at a per acre rate approximately twice that of the Tax Commissioner's 1975 appraisement for similar Webster County real estate, substantially similar parcels of adjacent and contiguous real estate owned by others is valued, assessed and taxed at a per acre rate considerably less than that applied to the petitioners and in fact less than the per acre rate for similar Webster County property by application of the Tax Commissioner's 1969 guide for the valuation and appraisal of coal properties.

Finally, the petitioners assert that the Assessor, over a period of years, has systematically valued, assessed and taxed petitioners' real estate at an excessive rate while refusing to increase to a like rate the assessment of substantially similar real estate lying adjacent and contiguous to that of petitioners, but owned by others.

The respondents contend that petitioners' real estate is properly valued, assessed and taxed.

THE FACTS

An examination of the evidence adduced before the Board of Equalization and Review, including transcribed testimony and designated exhibits, all of which were stipulated by the parties, reveals that the East Kentucky Energy Corporation, hereinafter referred to as East Kentucky, the petitioner in Civil Actions 84-MSC-8, 84-MSC-9, and 85-MSC-20, is a corporation organized under the laws of the Commonwealth of Kentucky, authorized to hold property and do business in West Virginia with its principal place of business at Glade Springs, Daniels, West Virginia.

It further appears that East Kentucky, by virtue of the deed of Allegheny Pittsburgh Coal Company dated July 15, 1982, and of record in the Office of the Clerk of the County Commission of Webster County, West Virginia, in Deed Book 195, at Page 318, is the successor in title to certain real estate formerly titled in the name of the Allegheny Pittsburgh Coal Company, the petitioner in Civil Actions 2532, 78-C-33, 80-C-59, 81-C-39, 82-MSC-26, 84-MSC-8, and 84-MSC-9, hereinafter referred to as Allegheny Pittsburgh, consisting of fee and mineral and sundry tracts of land situate on the waters of Birch River and Laurel Creek, in Glade District of Webster County, West Virginia.

The sum of Twenty-Nine Million, Eight Hundred Forty-Two Thousand, Five Hundred Dollars ($29,842,500.00), was the consideration declared in the deed from Allegheny Pittsburgh to East Kentucky.

The real estate conveyed to East Kentucky by Allegheny Pittsburgh had earlier been conveyed to Allegheny Pittsburgh by deeds dated September 1, 19[7]4, September 19, 1974, and October 21, 1974 from Raymond C. Desrosier, and of record in the Clerk's Office in Deed Book 170, at Pages 510, 515 and 518, respectively and by deed dated October 2, 1974, from Ernest A. Desrosier et al,

and of record in Deed Book 170, at Page 500. The total consideration declared in the deeds to Allegheny Pittsburgh was Twenty-Four Million, Six Hundred Twenty-Four Thousand, Five Hundred Dollars ($24,624,500.00).

During the period from 1975 through 1984, the real estate was assessed as is set forth in stipulated "Exhibit C" copied and incorporated herein. The assessment for the year 1985 was identical to that of 1984.

From Exhibit C it appears that the petitioners, East Kentucky and its predecessor in title, Allegheny Pittsburgh, were, from 1975 through 1984, assessed for ad valorem taxes on nineteen tracts of fee, mineral and surface real estate.

The 1975 unweighted average per acre assessment of the nineteen tracts listed in Exhibit C, now owned by the petitioner, East Kentucky, was $66.93. The unweighted average per acre assessment in 1976 was $1,084.67, and in 1984, $1,209.66 per acre, for the nineteen parcels.

If parcels 4R-67, a 3.75 acre fee parcel, assessed in 1984 at $2,258.67, per acre, 4Q-6, a 1.5 acre surface parcel, assessed in 1984 at $1,540.00, per acre, 4Q-7, a 1.75 acre surface parcel, assessed in 1984 at $2,640.00, per acre, 4Q-71-1, a 00.31 acre surface parcel, assessed in 1984 at $4,967.74, per acre, 4Q-91, a 2.36 acre fee parcel, assessed in 1984 at $2,936.44, per acre, and 3P-12, a 5.1 acre parcel, less coal, assessed in 1984 at $272.55, per acre, are deleted from the nineteen parcels listed, the unweighted average per acre assessment of the remaining thirteen parcels is $643.71, including therein a 4,287 acre fee parcel, less oil and gas, with a 1984 per acre assessment of $3,109.54.

If parcel 4Q-16, an 83.5 acre mineral parcel, assessed in 1984 at $65.87, per acre, a per acre assessment roughly equivalent to that of a majority of the parcels listed in the Exhibit B and G comparables, discussed

EXHIBIT C

EAST KENTUCKY ENERGY CORP. PROPERTIES

ID	Plat No.	Land Book Entry	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	% Increase Assessments 1975-1984
2	4Q-16	83.5 A. Min.	1,260	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,500	
		Laurel Creek	(15.09)	(59.89)	(59.89)	(59.89)	(59.89)	(59.89)	(59.89)	(59.89)	(59.89)	(65.87)	337%
3	4P-1	4,287 A. Fee Less	171,490	10,889,190	10,889,190	10,889,190	10,889,190	10,889,190	10,889,190	10,889,190	10,889,190	13,330,580	
		O & G-Laurel Creek	(40.00)	(2,540.05)	(2,540.05)	(2,540.05)	(2,540.05)	(2,540.05)	(2,540.05)	(2,540.05)	(2,540.05)	(3,109.54)	7674%
4		620 A. Coal	15,500	217,000	217,000	217,000	217,000	217,000	217,000	217,000	217,000	238,700	
		Birch Waters	(25.00)	(350.00)	(350.00)	(350.00)	(350.00)	(350.00)	(350.00)	(350.00)	(350.00)	(385.00)	1440%
5	4Q-15	35.5 A. Fee	1,260	17,600	17,600	17,600	17,600	17,600	17,600	17,600	17,600	19,360	
		Laurel Creek	(35.49)	(495.77)	(495.77)	(495.77)	(495.77)	(495.77)	(495.77)	(495.77)	(495.77)	(543.35)	1437%
6	3Q-5	1,335 A. Fee	51,230	654,200	654,200	654,200	654,200	654,200	654,200	654,200	654,200	719,620	
		Birch & Beaver Cr.	(38.37)	(490.04)	(490.04)	(490.04)	(490.04)	(490.04)	(490.04)	(490.04)	(490.04)	(539.04)	1305%
7	3Q-9	21.5 A. Fee	770	10,780	10,780	10,780	10,780	10,780	10,780	10,780	10,780	11,860	
		Laurel Creek	(35.81)	(501.40)	(501.40)	(501.40)	(501.40)	(501.40)	(501.40)	(501.40)	(501.40)	(551.63)	1441%
8	4R-67	3.75 Fee	550	7,700	7,700	7,700	7,700	7,700	7,700	7,700	7,700	8,470	
		Welch Glade	(146.67)	(2,053.33)	(2,053.33)	(2,053.33)	(2,053.33)	(2,053.33)	(2,053.33)	(2,053.33)	(2,053.33)	(2,258.67)	1440%
9	4Q-6	1.5 A. Surface	150	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,310	
		Birch Waters	(100)	(1,400)	(1,400)	(1,400)	(1,400)	(1,400)	(1,400)	(1,400)	(1,400)	(1,540)	1440%
10	4Q-7	1.75 A. Surface	300	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,620	
		Birch Waters	(171.43)	(2,400)	(2,400)	(2,400)	(2,400)	(2,400)	(2,400)	(2,400)	(2,400)	(2,640)	1440%
11	4Q-71-1	00.31 A. Surf.	100	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,540	
		Welch Glade	(322.58)	(4,516.13)	(4,516.13)	(4,516.13)	(4,516.13)	(4,516.13)	(4,516.13)	(4,516.13)	(4,516.13)	(4,967.74)	1440%
12	45-91	2.36 A. Fee	450	6,300	6,300	6,300	6,300	6,300	6,300	6,300	6,300	6,930	
		Welch Glade	(190.68)	(2,669.49)	(2,669.49)	(2,669.49)	(2,669.49)	(2,669.49)	(2,669.49)	(2,669.49)	(2,669.49)	(2,936.44)	1440%
13		100 A. Coal	1,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	34,650	
		Beaver Creek	(15.00)	(315)	(315)	(315)	(315)	(315)	(315)	(315)	(315)	(346.50)	2210%
14	3P-15	540 A. Fee	13,500	396,900	396,000	396,000	396,000	396,000	396,000	396,000	396,000	436,590	
			(25)	(735)	(735)	(735)	(735)	(735)	(735)	(735)	(735)	(808.50)	3134%
15	4Q-15	82.48 A. Surf.	2,000	22,500	22,500	22,500	22,500	22,500	22,500	22,500	22,500	24,750	
		Laurel Creek	(24.75)	(272.79)	(272.79)	(272.79)	(272.79)	(272.79)	(272.79)	(272.79)	(272.79)	(300.08)	1138%
16		100 A. Min.	1,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	34,650	
		Beaver Creek	(15)	(315.00)	(315.00)	(315.00)	(315.00)	(315.00)	(315.00)	(315.00)	(315.00)	(346.50)	2210%
17	3P-14	48.5 A. Surf.	850	20,160	20,160	20,160	20,160	20,160	20,160	20,160	20,160	22,180	
		Beaver Creek	(17.53)	(415.67)	(415.67)	(415.67)	(415.67)	(415.67)	(415.67)	(415.67)	(415.67)	(457.32)	2510%
18	3P-12	5.1 A. Less Coal	70	1,260	1,260	1,260	1,260	1,260	1,260	1,260	1,260	1,390	
		Beaver Creek	(13.73)	(247.06)	(247.06)	(247.06)	(247.06)	(247.06)	(247.06)	(247.06)	(247.06)	(272.55)	1886%
19	3P-11	25 A. Less Min.	500	10,920	10,920	10,920	10,920	10,920	10,920	10,920	10,920	12,010	
		Beaver Creek	(20)	(436.80)	(436.80)	(436.80)	(436.80)	(436.80)	(436.80)	(436.80)	(436.80)	(480.40)	2302%
20	3P-13	12.75 A. Surf.	250	5,040	5,040	5,040	5,040	5,040	5,040	5,040	5,040	5,540	
		Beaver Creek	(19.61)	(395.29)	(395.29)	(395.29)	(395.29)	(395.29)	(395.29)	(395.29)	(395.29)	(434.51)	2116%

Note: Figures given to the left of each parcel reflect total assessment for that tract for year shown [upper figure], and per-acre assessment for that tract [lower figure in parentheses].

herein, the unweighted per acre assessment of the remaining twelve parcels rises to $691.86.

Although an unweighted per acre assessment of either $691.86, or $643.71, greatly exceed the per acre assessments, weighted or unweighted, of the Exhibit B and G comparables, the unweighted per acre assessments are not reflective of the true assessment of petitioner's thirteen largest parcels.

The weighted average per acre assessment of these parcels, determined by dividing the total assessed value of the thirteen parcels, $14,896,007.98, by the total acreage, 7,291.23, for 1984 is $2,043.00. During the years 1976 through 1983, the weighted average per acre assessment for these parcels was $1,688.64. For 1975, $35.88.

The petitioners, Allegheny Pittsburgh and East Kentucky, in support of their contention, that the real estate in question was, during a period from 1975 through 1985, systematically assessed in violation of the "uniform and equal" provision of the West Virginia Constitution Article 10, Section 1, offered in evidence stipulated "Exhibit B". This exhibit, hereinafter set forth, contains a list of nine parcels of comparable real estate, consisting of fee, surface and one parcel less the coal, situate in Glade District, Webster County, West Virginia, reflecting the total per acre assessment, in parenthesis, for each tract.

An examination of Exhibit B reveals that the 1975 unweighted average per acre assessment for the nine comparable parcels listed therein was $27.63. The unweighted average per acre assessment in 1976 was $36.32, in 1982, $118.35 and in 1984, $121.04.

The parcels included in the Exhibit B comparables range in size from the largest, a 5,558 acre fee parcel, assessed as parcel 2L-5 to M. B. Partners LTD, and situate on Birch River, to the smallest, a 13.6 acre fee par-

EXHIBIT B
Comparable Property List
[Glade District, Webster County, West Virginia]

ID	Plat No.	Land Book Entry	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	% Increase in Assessments 1975-1984
1	3Q-1	KNIGHT, James G. & L. [illegible]. INK											
		1,300 Fee	45,000	65,000	65,000	65,000	65,000	65,000	65,000	71,500	71,500	78,650	
		Beaver Crk.	(35.00)	(50.00)	(50.00)	(50.00)	(50.00)	(50.00)	(50.00)	(55.00)	(55.00)	(60.50)	73%
2	4Q-13	CARPENTER, Dorsey R. & Dollie											
		357.66 Ac. Fee	11,970	19,200	19,200	19,200	19,200	19,200	28,400	28,400	28,400	28,400	
		Gauley & Birch	(33.47)	(53.68)	(53.68)	(53.68)	(53.68)	(53.68)	(79.41)	(79.41)	(79.41)	(79.41)	137%
3	4N-13	MAYSE, Wayne & J. E. HOPKINS											
		173.0 Ac. Surf.	2,950	3,460	3,460	3,460	3,460	3,460	3,460	3,810	3,810	4,190	
		Slab Camp Run	(17.05)	(20.00)	(20.00)	(20.00)	(20.00)	(20.00)	(20.00)	(22.02)	(22.02)	(24.22)	42%
4	2N-8	TIOGA LUMB. CO.											
		263.2 Fee	9,210	9,210	13,150	13,150	13,150	13,150	13,150	14,470	14,470	15,910	
		Birch River	(34.99)	(34.99)	(49.96)	(49.96)	(49.96)	(49.96)	(49.96)	(54.98)	(54.98)	(60.45)	73%
5	3P-10	ANR COAL DEVELOPMENT CO.											
		50 Less Coal	1,000	1,000	1,000	1,000	2,750	5,500	5,500	5,500	5,500	5,500	
		Beaver Creek	(20.00)	(20.00)	(20.00)	(20.00)	(55.00)	(110.00)	(110.00)	(110.00)	(110.00)	(110.00)	450%
6	2L-5	M. B. PARTNERS, LTD.—5,558 Fee	139,400	278,820	278,820	278,820	278,820	278,820	278,820	305,690	305,690	336,250	
		Birch River	(25.08)	(50.17)	(50.17)	(50.17)	(50.17)	(50.17)	(50.17)	(55.00)	(55.00)	(60.50)	141%
7	3R-7	DEITZ, R. R. (Trustee)											
		486.94 Fee	17,040	24,350	24,350	24,350	24,350	24,350	24,350	26,790	26,790	29,460	
		Strouds Creek	(34.99)	(50.01)	(50.01)	(50.01)	(50.01)	(50.01)	(50.01)	(55.02)	(55.02)	(60.50)	73%
8	3P/1-6-7-8	TULLY, J. M.											
		196.5 Ac. Surf.	2,940	2,940	3,940	3,940	14,700	14,700	14,700	16,170	16,170	16,170	
		Beaver Creek	(14.96)	(14.96)	(20.05)	(20.05)	(74.81)	(74.81)	(74.81)	(82.29)	(82.29)	(82.29)	450%
9	3P-9	ANR COAL DEVELOPMENT CO.											
		13.6 Fee, Bvr. Ck.	450	450	450	450	3,750	7,500	7,500	7,500	7,500	7,500	
			(33.09)	(33.09)	(33.09)	(33.09)	(275.74)	(551.47)	(551.47)	(551.47)	(551.47)	(551.47)	1567%

NOTE: Figures given to the left of each parcel reflect total assessment for that tract for year shown (upper figure) and per-acre assessment for that tract (lower figure in parentheses).

cel assessed to ANR Coal Development Co. as parcel 3P-9, and situate on Beaver Creek. With exception of a 50 acre parcel, 3P-10, also assessed to A.N.R. Coal Development Co., the remaining six parcels included within the Exhibit B comparables are all parcels exceeding 100 acres in size, the largest of the six being parcel 3Q-1, a 1,300 acre fee parcel situate on Beaver Creek.

In 1975, when the unweighted average per acre assessment for Exhibit B comparables stood at $27.63, parcel 3Q-1, a 1,300 acre fee parcel on Beaver Creek, assessed in the names of James G. Knight and L. K. Ink, then assessed at $35.00 per acre, bore the highest assessment. Parcel 3P/1-6-7-8, a 196.5 acre surface tract on Beaver Creek, assessed to J. M. Tully, was low at $14.96, per acre. Parcel 2L-5, the M. B. Partners, LTD, 5,558 acre fee parcel was then assessed at $25.08 per acre. Parcel 3P-9, the 13.6 acre parcel now assessed to A.N.R. Coal Development Co., was then assessed at $33.09 per acre.

Between 1975 and 1984 the unweighted average per acre assessment of the Exhibit B comparables rose from $27.63 to $121.04. In 1984, parcel 4N-13, a 173.0 acre surface tract on Slab Camp Run, assessed to Wayne Mayse and J. E. Hopkins, was assessed at $24.22 per acre. The 13.6 acre parcel assessed to A.N.R. Coal Development Co. bore the high assessment of the Exhibit B comparables at $551.47 per acre.

Between 1975 and 1984, the James G. Knight and L. K. Ink, 1,300 acre tract, parcel 3Q-1, per acre assessment rose from $35.00, to $60.50. The assessment on the M.B. Partners LTD, 5.558 acre fee tract rose during this period from $25.08, to $60.50, per acre.

With the exception of parcels 3P-9 and 3P-10, both now assessed to A.N.R. Coal Development Co., at $551.47 and $110.00 per acre respectively, neither of the Exhibit B comparables rose to a per acre assessment in excess of $85.00, between 1975 and 1984.

A computation of the weighted average per acre assessment of the Exhibit B comparables reveals that these parcels, consisting of a total of 8,398.9 acres, were assessed at $27.38 per acre in 1975. In 1976 the weighted average per acre assessment of the Exhibit B comparables rose to $48.15 and in 1982, to $57.13 per acre.

By 1984 the 8,398.9 acres making up the Exhibit B comparables had a total assessed value of $522,030.00, giving a weighted average per acre assessment of $62.15.

While the weighted average per acre assessment of the thirteen largest parcels of Allegheny Pittsburgh-East Kentucky real estate was rising from $35.88, in 1975, to $1,688.64, in 1976, to $2,043.00 in 1984, the weighted average per acre assessments of the Exhibit B comparables, during the same years were $27.38, $48.15, and $62.15.

Although the petitioner's per acre assessment on parcel 4P-1, a 4,287 acre tract, less oil and gas, situate on Laurel Creek rose from $40.00 per acre in 1975, to $3,109.54 in 1984, the per acre assessment of the M.B. Partners, LTD, fee tract of 5,558 acres on Birch River, parcel 2L-5 rose from $25.08 in 1975 to only $60.50 in 1984. The per acre difference in 1984 assessment between these two parcels is $3,049.04.

In addition to the Exhibit B comparables the parties further stipulated and admitted as evidence, Exhibit G, E. V. Morton's updated list of comparable parcels of real estate.

The Exhibit G comparables, consisting of fifty parcels in 1975, and forty-eight parcels in 1984, is a list of parcels of real estate consisting largely of fee and surface parcels of various size but also including parcels of oil and gas and fee less the coal, all situate in Webster County, West Virginia, and substantially similar to petitioner's real estate.

The 1975 unweighted average per acre assessment of the Exhibit G parcels was $95.61. The unweighted assessment had risen to $145.29 in 1982 and in 1984, $148.91 for the forty-eight parcels then included.

The 1984 unweighted per acre average assessment of the forty-eight parcels included in the Exhibit G comparables included parcels 4Q-24-1, an 8,000 square foot parcel assessed at $2,777.78 per acre and 4Q-8, a .75 acre parcel assessed at $1,106.67, per acre. If these small parcels are omitted from the Exhibit G comparables, the unweighted per acre assessment for the remaining forty-six parcels is $69.20.

An examination of the Exhibit G comparables reveals that the total acreage of the fifty parcels listed in 1975 was 9,928.96. The weighted per acre average assessment for these parcels, with a total assessed value in 1975, of $277,520.00 was then $27.95.

The 1982, weighted per acre average assessment for the Exhibit G comparables, then consisting of forty-eight parcels comprising 9,767.76 total acres were $53.20 per acre.

In 1984, the total assessed value of the forty-eight Exhibit G parcels was $569,594.00. The weighted per acre assessed value of the 9,767.76 acres making up the forty-eight parcels listed was $58.31.

Between 1975 and 1984, the weighted per acre average assessment of the Exhibit G comparables rose $30.36, per acre from $27.95, to $58.31, per acre.

A comparison of the Exhibit C, B and G properties, for the tax year 1984, classified according to the interest owned, i.e., surface, fee, mixed or coal, also discloses the inconsistency apparent in a comparison of weighted, per acre, average assessments of these properties.

The 1984, weighted, per acre, average assessment for the Exhibit C surface properties, for instance, was

$423.41, per acre, for seven parcels. Six fee parcels assessed to petitioner, were assessed at $620.62, per acre, three mixed parcels, including the 4,287, acre parcel designated 4P-1, bore a weighted, per acre, average assessment of $2,990.88, while petitioners two coal only parcels listed on Exhibit C, were assessed at $379.65, per acre.

In contrast, the 1984, weighted, per acre, average assessment of the Exhibit B surface properties was $55.10, per acre, the six fee parcels $56.05, and the single mixed interest parcel, $110.00, per acre.

The 1984, weighted, per acre, average assessment for the Exhibit G comparables were: surface, twenty-two parcels, $55.98, per acre, fee, nineteen parcels, $61.32, per acre, and mixed, six parcels, $65.62, per acre. There are no coal only parcels listed among the Exhibit G comparables.

It is evident from the comparison of the weighted, per acre, average assessments of the petitioners' properties with the comparable properties listed in Exhibit B and G, whether the average assessments be of all the properties listed, without regard to the interest in real estate assessed, or the average, per acre, assessment, according to the particular interest assessed, that the increase in assessment of the properties listed on Exhibit C is substantially greater than the increased assessments of the Exhibit B and G properties.

A comparison of the assessment of petitioners' properties, Exhibit C, with the assessment of the Exhibit B and G properties, between the years of 1976, and 1984, likewise reveals a pattern of substantially greater assessments applied to petitioners' properties than was applied to the Exhibit B and G properties.

The transcripts of testimony, adduced in the various hearings before the Board of Equalization and Review, reveal that, though the assessor was aware that petitioners' real estate was being assessed at a rate substantially greater than the assessment applied to similar real estate owned by others, it was the assessor's contention that the real estate of the petitioner, East Kentucky, and that of its predecessor in title, Allegheny Pittsburgh, was properly assessed at fifty per cent (now sixty) of the value set forth in the declaration of consideration appearing in petitioners' deeds.

The assessor maintained that all recently transferred property was uniformly and equally assessed at fifty per cent (now sixty) of the value declared in the most recent deed of conveyance to a taxpayer. According to the assessor, the declared consideration set forth in a deed conveying real estate in an arms length transaction between a willing buyer and a willing seller was the most accurate reflection of the market value of the real estate conveyed.

The assessor, though recognizing the fact that some real estate in Webster County, including that of the petitioners, was being assessed at a higher rate as a consequence of the consideration declared in the taxpayers deed, asserted that the assessment of property which had not been recently transferred, and therefore had a low, or no, declared value, had nevertheless been increased in assessment periodically, inferentially suggesting that over a period of time equalization would be accomplished through periodic increases in the assessment of property which had not recently changed hands. In support of this position, increases in the assessment of Webster County real estate, between the years of 1975, and 1984, were noted.

As examination of the increase in assessments of the Exhibit B, G and C properties between 1975, and 1984, discloses that the weighted, per acre, average assessment of the Exhibit B comparables increased a total of $34.77, per acre, over the nine year period. A yearly increase of $3.86, per acre.

The assessment of the Exhibit G properties, during this period, rose a total of $30.36, per acre, a yearly increase of $3.37 per acre.

By comparison, the petitioners' weighted, per acre, average assessment increased by $2,007.12, per acre, during the same period. In contrast to the yearly, per acre, average increases in the assessments of the Exhibit B and G properties, the assessment of petitioners' properties increased an average of $223.01, per acre, per year.

The increased assessment of the Exhibit B properties was 0.017, per cent and that of the Exhibit G properties was 0.015, per cent of the increase in the assessment of petitioners' properties.

During this period, the difference in the increase in the weighted, per acre, assessment between the Exhibit B and petitioners' (Exhibit C) properties was $1,908.85, per acre. The difference in increase in the weighted per acre assessment between the Exhibit G and Exhibit C properties was $1,984.69.

Though the assessor appeared to imply that increased assessments of the properties assessed low would eventually result in equalization, it is worthy of note that should the increased assessment applied to the Exhibit B properties between 1975 and 1984 be applied in like amount in the future a period of 513.17 years would be required for equalization with petitioners present assessment.

Equalization of the Exhibit C and Exhibit G properties, at the rate of increased assessment applied to the Exhibit G comparables over the past ten years would require a period of 588.92 years for equalization.

Should increased assessments be uniformly applied to the Exhibit B, C and G [properties] in the future equalization would, of course, never be accomplished. In fact, the difference between the assessments would become greater, not less.

In addition to Exhibits B, C and G the parties stipulated and agreed to the admission of Exhibit A, a map showing the real estate of the petitioners and that used as comparables in Exhibits B and G. From Exhibit A it is obvious that the real estate of the petitioners and that of contiguous, adjoining and adjacent landholders to which it is compared is substantially the same.

From the evidence it appears that in making the contested assessments the assessor did not compare the various features of the real estate to which the high assesment was applied with the various features of land assessed at a much lower rate.

It does not appear from the evidence that petitioners' Exhibit C real estate is topographically dissimilar to the real estate listed in Exhibits B and G. The assessor did not procure, examine or consider reports of engineers, surveyors, timbermen, oil and gas developers, real estate brokers or agents, or other persons possessing expertise in any particular field relating to real estate values in assessing petitioners' real estate.

The questioned assessments were not based upon the presence of economically minable or removable coal, oil, gas or harvestable timber in or upon petitioners' real estate, as compared to an absence of the same in or upon the Exhibit B or G properties.

The questioned assessments were not based upon present use or immediately foreseeable economic development of petitioners' real estate. The assessor did not consider the size, shape, location, access, or availability of public highways, sewers, water, gas or electricity in assessing either the petitioners' real estate or the real estate listed in the Exhibit B or G comparables.

The sole basis for the assessment of petitioners' real estate was, according to the assessor, the consideration declared in petitioners' deeds.

Upon examination, the assessor did not contend that petitioners' assessment was the result of unique or valuable features peculiar only to petitioners' land. The assessor admitted on examination that she did not, in making her appraisment, physically inspect or view the petitioners' real estate, that she had not compared it to adjacent or contiguous tracts, that no scientific examinations or tests had been made or performed, by her or at her request or direction, and that appraisements had not been sought or considered, including appraisements prepared by the State Tax Commissioner of West Virginia for use by assessors, in the performance of the duties of that office.

The assessor admitted on examination that, though she was aware of and had access to the Tax Commissioner's guide for assessors, in the valuation of coal appraisals and coal deposits, Exhibits H and I, [she] had not used or attempted to use or apply these materials in the contested assessments.

The record does not disclose that the assessor ever, in making assessments at issue before this Court made use of any materials, guides, services or assistance available through the State Tax Commissioner's Office.

The evidence before the undersigned discloses that in 1975 the assessment of the real estate now owned by petitioner, totaling 7,306 acres, was $488,990.58.

After the property was conveyed to the petitioner, Allegheny Pittsburgh, during the autumn of 1974, the assessment of this real estate, on a purchase price of $24,624,500.00 rose to $12,312,250.00 in 1976.

Following the conveyance of this real estate by the petitioner, Allegheny Pittsburgh, to the petitioner, East Kentucky, on July 15, 1982, for a declared consideration of $29,842,500.00, the assessment was increased to $14,921,250.00, in 1984.

A comparison of the assessment history of the Exhibit B properties for the same period reveals that this real estate, a total of 8,398.9 acres, was assessed in 1975, at $229,961.88. In 1976, the total assessment was increased to $404,407.03, and in 1982 to the sum of $522,030.00.

The assessment for Exhibit G comparables, a total of 9,767.76 acres was $277,520.00 in 1975. The assessment of this property was increased to $519,644.83, in 1982, and in 1984, to $569,594.00.

A comparison of the Exhibit C, petitioners, and Exhibit B assessments for 1975 discloses that the Exhibit C assessment was $259,028.70 greater than the Exhibit B assessment. This difference increased to $11,907,843.00, in 1976, and in 1984, to $14,399,220.00.

The Exhibit C assessment was $211,470.58 greater than the Exhibit G assessment in 1975. The difference increased to $11,792,606.00 in 1976 and to $14,351,656.00 in 1984.

These differences in assessment have been protested, first by the petitioner, Allegheny Pittsburgh, and now by the petitioners, East Kentucky, since 1976, and are alleged by the petitioners to be violative of the "equal and uniform" provision of West Virginia Constitution Article X, Section 1.

DISCUSSION

Article X, Section 1, of the West Virginia Constitution, titled *Taxation and Finance* provides, in part, that ". . . taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law."

Article X, Section 1, further provides, in part, that "[n]o one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value . . .".

The West Virginia Supreme Court of Appeals in a case styled, Killen v. Logan County Com'n., W.Va., 295 S.E. 2d 689, at Page 693, characterized Article X as being ". . . both a grant of power to the Legislature to tax . . ." by virtue of the provisions of West Virginia Constitution Article 10, §§1, 5, and 9, ". . . and a limitation upon that power."

The limitation according to the Court lies in the requirement that the taxation contemplated be "equal and uniform" and in the concept and provision that taxation should be equal on properties of equal value.

Article X, Section 1, according to our Court contemplates the establishment of a system of property taxation in which property, "both real and personal" is subjected to "equal and uniform" taxation, as "directed by law".

The matter of "equal and uniform" property taxation has been addressed by the Legislature through the enactment of various statutes for the implementation of the process of taxation. This process contemplates a statewide system of taxation in which the tax is to be equally and uniformly applied in proportion to the value of the property taxed.

The Supreme Court in Killen v. Logan County Com'n., *supra*, described the process of taxation as consisting of the elements of valuation and levying. Valuation is described as the act of assigning a value to each property to be taxed. Once the value is assigned to a particular property a tax, at a designated rate, is levied, or charged, against the property.

The responsibility [of] valuation, assigning or placing the value at which property is to be taxed, is that of the county assessor. This aspect of the process of taxation is known as assessment and is the aspect of the process of taxation at issue before this Court.

Once the county assessor establishes a value for a property, assesses it, for taxation, various levying bodies, including the State, the county commissions, local school boards and municipalities determine the rate, or amount, of tax to be levied or collected for each one hundred dollars value assessed. This aspect of the taxation process, known as levying, is not at issue before this Court.

W.Va. Code, § 11-3-1, provides that "[a]ll property shall be assessed (by the assessor) annually as of the first day of July at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale as such property, the value of which is sought to be ascertain, is usually sold, and not the price which might be realized if such property were sold at a forced sale . . .".

Though our Supreme Court in Kemp v. Boyd, W.Va., 275 S.E.2d at 303, recognized that the primary responsibility for the execution of the duty of assessing county property for taxes, ". . . a task requiring foresight, cooperation and detailed labor . . .", rests upon the county assessors and commissioners, the Court, in Tug Valley Recovery Center, Inc. v. Mingo Cty. Comm., W.Va., 261 S.E.2d 165, at page 173, in noting the technical and complex nature of the assessment of real estate values, particularly mineral estates, concluded that the task of assessment was ". . . lightened to a great extent by the provisions of W.Va. Code § 18-9A-11 . . ." which ". . . provides that the State Tax Commissioner is to make an appraisal of all mineral and surface estates in West Virginia, and *that appraisal is to serve as the basis for determining true and actual value for all assessment purposes.*"

The Court in stating that ". . . once the Tax Commissioner's appraisal has been made . . . it is incumbent upon the circuit court, (upon an appeal) as it would be upon the county commission and the assessor, to set the assessed value of all parcels of land at the amount estab-

lished by the State Tax Commissioner.", appears to have attached a substantial significance to the Tax Commissioner's appraisal.

It would seem that the former assessor, who during her testimony acknowledged receipt of the Tax Commissioner's appraisal of Webster County coal properties, obviously did not attach the same significance, in view of the fact that after receipt of the appraisal it was placed in a drawer where it remained unused and abandoned until the day of the hearing. The present occupant of the office seems to have adopted substantially the same position as that of his predecessor.

The responsibility of the Tax Commissioner to provide executive oversight for the assessor, by furnishing property appraisals and correcting incorrect assessments as provided in W.Va. Code § 18-9A-11, was emphasized in Killen v. Logan County Com'n., *supra*, at page 694, and again in a case syled In Re: Tax Assess. Against Pocahontas Land Co., 303 S.E.2d 691 (W.Va. 1983), at page 699. Our Court in Killen, at page 694, stated that "[t]he state tax commissioner has the duty of supervising all of the valuation process. W.Va. Code § 11-1-2; W.Va. Code § 18-9A-11."

Though the interrelation between the duties of an assessor and those of the Tax Commissioner is apparent from an examination of appropriate statutory provisions and cases decided by our Court with reference thereto, the functions of the two offices in the valuation process are different.

In the process of valuation one of the duties of the Tax Commisioner is that of *appraisal*, while that of the assessor is that of *assessment*. In footnote 5, at pages 694 and 695, our Court, in the Killen case *supra*, defined an appraisal as generally meaning ". . . the estimate of value given a particular item or piece of property." An assessment was described as meaning ". . . the listing

and valuation of property for taxation purposes." Both appraisals and ". . . assessments are to be based on true and actual value. W.Va. Code § 11-3-1."

Although the undersigned found no statute or case specifically so stating, it seems, from the statutes and cases examined, that the process of appraisal and assessment contemplated by the Legislature is one in which the State Tax Commissioner has been vested with a general responsibility for the establishment of property values, statewide. The statutes and cases also suggest that the assessor's duty is that of affirmatively examining and assessing each piece of property, equally and uniformly, within his county. If the process works it would seem that property appraisals and assessments, within county borders and statewide would be uniform.

Logic indicates that although the Tax Commissioner may be aware, in general, of the value of machinery, equipment, motor vehicles, boats, dwellings, buildings, land and other property, both from county to county and statewide, it does not follow the Commissioner, with or without the help of his deputies, would be aware of the condition of all the machinery, equipment, motor vehicles, boats, dwellings, buildings and land, any more than he would be aware of the specific characteristics of a particular parcel of land in Webster County.

Though the Tax Commissioner might have general knowledge of the value of Webster County land, without the benefit of examination the Commissioner would not be aware of whether any given tract was level or precipitous, timbered, farmed or waste land, mined or unmined, accessible or inaccessible or any number of things that could add to, or detract from, the value of the land.

It seems that in vesting the assessor's office with the power to assess the Legislature contemplated an assessment process in which the assessor and his deputies, they being county residents, would go into the county and view

the machinery, equipment, motor vehicles, boats, dwellings, buildings, land and other property to be assessed and make a reasoned and rational determination as to value for purposes of assessment. Our Court in Tug Valley Recovery Center, Inc. v. Mingo Cty. Comm. W.Va., 261 S.E.2d 165, at page 173, described "[t]he assessment of real estate value . . ." as ". . . a very technical and complex area . . ." and in Kemp v. Boyd, *supra*, described " . . . the mission of assessing county property for taxes as a task requiring foresight, cooperation and detailed labor."

In a case styled Michael Kline, et al. v. Jim McCloud, et al., 326 S.E.2d 715 (W.Va. 1984), at page 718 of the decision, our Court stated that "[i]n determining the fair market value of a piece of land, a county assessor must 'seek out all information which would enable him to properly fulfill his legal obligation.' *In Re* Shonk Land Co., 157 W.Va. 757, 761, 204 S.E.2d 68, 70 (1974)." In the case at bar it appears from the evidence that the assessment was based solely on the consideration declared in petitioners' deeds. The assessor gave no weight or consideration to the appraisals of the Tax Commissioner, engineering reports presented on behalf of the petitioners, or the appraisals submitted. Instead of seeking out information the assessor seems to have totally refused to consider evidence submitted on behalf of the petitioners.

However, though recognizing the supervisory authority of the Tax Commissioner in the process of property taxation, our Court appears to hold that an assessor, in performing the function of property assessment, is not obliged to simply parrot the appraisals of the Commissioner.

The first step in taxing real property is a determination of "true and actual" value. Kline v. McCloud, *supra*, at page 718. In the Kline case the Court reaffirmed that true and actual value meant fair market value, the selling price on the open market. Quoting In

Re Shonk Land Co., 157 W.Va. 757, at 761, 204 S.E.2d 68, at 70, our Court in Kline, at page 718, stated that: "although the assessor is under the supervision of the state tax commissioner he is not restricted in the search for information leading to the true and actual value of properties to questions formulated by that state official."

The Court thereafter again affirmed its holding in Killen that county assessors were entitled to consult other credible and reliable sources, including the owner's sworn valuation and bona fide appraisals, as a part of the process of assessment, and were not limited to merely following the appraisals of the State Tax Commissioner.

Finally, the Court, citing Crouch v. County Court of Wyoming County, 116 W.Va. 476, 477, 181 S.E. 819 (1935), ". . . recognized that the price paid for real estate . . ." is ". . . a substantial indicia of its true and actual value, so long as the property changed hands in an arm's length transaction . . ." and that although the purchase price paid was not conclusive on the issue of value it is a factor to be considered in an arms length transaction.

From the foregoing it is evident that the assessor of Webster County, in 1976, when the assessment of the petitioner, Allegheny Pittsburgh, was increased, and thereafter, had several courses of action available in the matter of the questioned assessments.

The assessor had the option of basing the assessment, as has been proposed by petitioners, upon the Tax Commissioner's appraisals of Webster County real estate. At that time, 1976, the 1969 appraisal was available, and possibly the appraisal for 1975. The assessor did not use or consider the appraisals available through the Tax Commissioner's office.

In addition, the assessor had the option of assessing the subject real estate at a rate consistent with the as-

sessment of substantially similar adjacent and contiguous properties. This option was likewise rejected.

The assessor at that time and thereafter, could also have assessed the subject property based on a number of factors including the declared consideration, the Tax Commissioner's appraisals, the assessed value of substantially similar real estate, appraisals presented by or secured from private appraisers, the nature, use, access and development of the property together with other factors causing or tending to cause the subject property to be worth more, or less than comparable real estate. This option was likewise rejected by the assessor.

Finally, the assessor had the option, at that time, of assessing petitioner, Allegheny Pittsburgh's, real estate at fifty percent of the consideration declared in the deed. At that juncture the assessment could have been properly made and sustained under the theory that in determining "true and actual" value, for purposes of assessment, the value declared in an arms length transaction substantially indicates the true and actual value of the property conveyed.

At that point, the assessor would have been entitled to the benefit of the general presumption that the valuation was correct, Bankers Pocahontas Coal Company v. County Court of McDowell County, 135 W.Va. 174, 179, 62 S.E.2d 801, 804 (1950), thereby casting upon the taxpayer, the petitioner, the burden of showing by clear and convincing evidence that the assessment was erroneous. In Re: Tax Assessment Against the National Bank of West Virginia at Wheeling, et al., 137 W.Va. 673, 687, 73 S.E.2d 655, 664 (1952), In Re Assessment of Kanawha Valley Bank, 144 W.Va. 646, 109 S.E.2d 649 (1959), In Re Tax Assess. Against Pocahontas Land Co., 303 S.E.2d 691, 699 (W.Va. 1983). Although the 1976 assessment, as is shown by the evidence, exceeded the assessment of substantially similar property, the deviation, at that time could have been upheld as a spo-

radic deviation. However, if an assessor undertakes to base current real estate assessments on the value declared in recent arms length real estate transactions, he must likewise raise the assessment of similar real estate to a like level, whether or not the similar real estate has been recently conveyed.

Though the 1976 assessment of Allegheny Pittsburgh's real estate may have been presumptively correct, at that time, by failing to equalize assessments, that is, to either raise the assessment of comparable properties to a level comparable to petitioners' assessment, or to lower petitioners' assessment to a level comparable [to] that at which substantially similar real estate was being assessed, the assessor failed to achieve equality and uniformity in taxation, as required by Article X, Section 1. Ample opportunity existed between 1976 and 1985 to correct inequality of assessment reflected in Exhibits B, C and G.

Our Court, in Killen v. Logan County Comm'n., *supra*, at page 701, citing R. Blakey, *Report on Taxation in West Virginia* 107 (1930), noted that

> The success of the general property tax depends upon the quality of the assessments. If assessments are very unequal the foundation of the entire tax structure is unsound. Inequality of assessments means that *those underassessed pay less than their fair share of public expenses* and *those overassessed pay their full share and, in addition, they have to make up for what the underassessed fail to pay*. The greater the inequalities of assessment the greater the inequalities of the taxes and the more grevious the burdens upon those who find it most difficult to meet their obligations. (Emphasis supplied).

In a case decided in 1980, styled, Matter of U. S. Steel Corp., W.Va., 268 S.E.2d 128, at page 132, our Court held that "[w]hile it is true that unintentional, sporadic deviations from an established system are not a sufficient

basis for reversal of an assessment . . . [i]t would be totally unacceptable to allow counties to use two systems of assessment, one for favored taxpayers and one for other." Although the facts in the U. S. Steel case are not identical to those in the case at bar, the principle set forth therein is applicable here.

Though the issue confronting this Court, the assessor, the County Commission and Board of Education of Webster County, has been portrayed in some newspapers as an issue involving the wrongful, and unjustified, refusal of a foreign corporation to pay lawfully assessed and levied taxes, such is not the cases.

The reluctance of the assessor and a Board of Equalization and Review to increase the real estate assessments, and consequently the real estate taxes, of friends and neighbors to a level comparable to the assessment and levy returned against the petitioners, East Kentucky and Allegheny Pittsburgh is understandable. So too is a refusal to lower the assessment of a foreign corporation, especially if to do so has been publicly represented as subjecting the county government and the school system to bankruptcy.

Despite the outcry, however, the evidence presented clearly and convincingly establishes that the assessor, and the Board of Equalization and Review, in sustaining the questioned assessments, have, over a period of ten years, systematically and intentionally assessed the petitioners' real estate, and consequently levied taxes against petitioners' real estate, at a weighted rate per acre of from 5,672.56 to 6,511.06 percent in excess of the weighted rate per acre assessment applied to comparable real estate owned by others and located adjacent, contiguous or near that of the petitioners.

The evidence further shows, and the Court so finds, that the inequality of the assessment of petitioners' real estate and that of comparable tracts has been repeatedly

brought to the attention of the assessor and the Board of Equalization and Review over the ten year period involved.

The evidence also demonstrates, and the Court finds, that as petitioners have repea[te]dly and consistently protested the inequality of the assessment of their real estate, as compared to the assessments of comparable real estate owned by others, the assessor and Board of Equalization and Review, have just as consistently and repeatedly refused to equalize petitioners assessment downward or to equalize the real estate assessments of others upward, though petitioners' have requested relief in both directions.

Additionally, the evidence discloses, and the Court finds, that the assessor and Board of Equalization and Review have repeatedly refused to consider or give any weight or credence to the evidence tendered by petitioners in their prayer for equal and uniform assessment.

Our Court in the Pocahontas Land Co. case, 303 S.E. 2d 691, at page 699, (W.Va. 1983), held that ". . . where a taxpayer protests his assessment before a board, he bears the burden of demonstrating by clear and convincing evidence that his assessment is erroneous. Once this is done, *it is incumbent upon the taxing authority to place some evidence in the record to show why its assessment is correct.*" (Emphasis supplied).

In the matter before this Court, though the petitioners have demonstrated by clear and convincing evidence that the assessment is erroneous, the taxing authority has not only failed to place evidence in the record to establish the correctness of the assessment, but has totally failed to consider the evidence tendered by the petitioners.

It would seem from a reading of Kline v. McCloud, 326 S.E.2d 715, 719 (W.Va. 1984), that even though an assessor may ". . . supplement the Tax Commissioner's appraisal report with information obtained from property

owners or from recent deed values to determine the value of property without violating the equal and uniform provisions of our State Constitution . . .", if the taxpayer can demonstrate that the real estate of others has been systematically and intentionally undervalued, the taxpayer is entitled to relief under the equal protection clause of the Fourteenth Amendment to the United States Constitution and under the equal and uniform clause of Section 1, Article X of the West Virginia Constitution. Kline v. McCloud, *supra*, at page 724.

It is further held in *Kline*, at page 724, ". . . that the price paid for property in an arm's length transaction, while not conclusive, is relevant evidence of its true and actual value." It seems to be obvious, therefore, that although an assessor is at liberty to base real estate assessments upon values or consideration declared in recent conveyances, if the assessor elects to use recent sales as the basis for the assessment of real estate, he is obligated by the equal protection clause of the Fourteenth Amendment to the United States Constitution and the equal and uniform clause of Section 1, Article X, of the West Virginia Constitution to base the real estate assesssments of substantially similar real estate, whether owned by a corporation or an individual, upon the same or a similar value, depending on certain variables, even though the real estate has not been the subject of a recent conveyance.

The evidence clearly demonstrates, and this Court finds, that though the assessor and Board of Equalization and Review were lawfully entitled to consider the consideration declared in petitioners' deeds, in determining their respective assessments, by intentionally and systematically, failing to either equalize assessments by increasing the assessed value of substantially similar property to the level of petitioners' assessments, or to equalize assessments by lowering petitioners' assessments to the level at which comparable real estate was being assessed, the assessor and Board of Equalization and Review violated the equal and uniform clause of Section 1, Article X of the West Virginia Constitution and the equal protection clause of the Fourteenth Amendment to the United States Constitution.

From the evidence presented, this Court finds that the assessments complained of by petitioners were incorrect. In this circumstance, pursuant to the provisions of West Virginia Code § 11-3-25, the Circuit Court is obligated to "correct the assessment, and fix the property at its true and actual value." Tug Valley Recovery Center, Inc. v. Mingo County Commission, W.Va., 261 S.E.2d 165, 171; Killen v. Logan County Commission, W.Va., 295 S.E.2d 689, 706.

Though our Court, at page 172 of the Tug Valley Recovery Center, Inc. v. Mingo County Commission, decision declined, in view of the full taxation mandates of West Virginia Code § 11-3-1 and § 18-9A-1, to reduce the petitioner's assessment and instead directed an increase in the assessment of the taxpayers who were undervalued, this Court is of the opinion that a reduction of the petitioner's assessment, in this instance, is proper for several reasons.

First, as our Court noted in the Killen decision, at page 703, "[t]he United States Supreme Court . . . [i]n Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923) . . . ruled that where uniformity of taxation and full value assessment could not be reconciled, uniformity took precedence."

In the present matter, though this Court is of the opinion that authority exists to order the assessor to equalize assessments by increasing the assessment of comparable properties to the level at which petitioners' property is assessed, the undersigned is further of the opinion that the consideration declared in an arms length transfer of real estate, though relevant as to value, should not

necessarily serve as the basis for the assessment of all similar real estate.

Though petitioners' deeds reflect declared considerations of 24,624,000.00 and 29,842,500.00 in 1974 and 1982, and though the real estate may in fact have been worth the consideration declared, the differing abilities of various real estate owners to bear the burden of real estate taxes based upon prices paid by the wealthy leads the undersigned to conclude that the consideration declared in petitioners' deeds should not, in this case, serve as the basis for the assessment of all substantially similar real estate in Webster County.

The impact of high real estate taxes will obviously be greater upon one of modest income than it will on an individual or corporation possessed of wealth sufficient to purchase real estate at a premium price and in a position to take advantage of various tax write offs available under present tax laws.

The consequence of a high real estate assessment, and tax, will materially vary depending on whether the taxpayer is one of limited or fixed income or is a public utility company, entitled to write off, and to pass on to consumers, the cost of real estate taxes levied. Should uniformity of taxation be attempted through an increase of the assessment of Webster County real estate to the level of that of the petitioners, an assessment in excess of $2,000.00 per acre, it seems probable that individual ownership of real estate of the nature owned by the petitioners would shortly disappear except for those of great wealth.

Second, from a reading of W.Va. Code § 11-3-25, relating to relief in the Circuit Court against an erroneous assessment, it appears that a Circuit Court, in hearing an appeal as contemplated in § 11-3-25, is empowered to fix the true and actual value of property erroneously assessed and to order the refund of excess taxes paid, the

probable basis for the public clamor in this matter, if the property was valued too high, and if valued too low, to correct the valuation and fix its true and actual value.

From the foregoing, it is obvious that a Circuit Court is vested with authority to increase or decrease values in the process of correcting erroneous assessments, as an assessor and a Board of Equalization and Review is vested with authority to increase or decrease assessments to secure equal and uniform property taxation.

Therefore, though our Court appeared to discourage a reduction in valuation to secure equal and uniform taxation, in the Tug Valley Recovery case, *supra*, page 172, it is evident from the provisions of W.Va. Code § 11-3-25, and the utilization of this approach by our Court in a series of its decisions: In Re United States Steel Corp., W.Va. 268 S.E.2d 128 (1980); In Re Tax Assessment Against Pocahontas Land Corp., W.Va. 210 S.E.2d 641 (1976); In Re Assessment of Kanawha Valley Bank, 144 W.Va. 346, 109 S.E.2d 649 (1959), that where a reduction in the value of property erroneously assessed is necessary to insure uniformity Circuit Courts are empowered to reduce the values of properties erroneously assessed.

Finally, our Court has emphasized the need to assure uniform property assessment by, among other things, the implementation of appropriate provisions of W.Va. Code § 18-9A-11. At page 705 of Killen v. Logan County Commission case *supra* our Court, in emphasizing the need to make use of the Tax Commissioner's appraisals, stated that "W.Va. Code § 18-9A-11 provides that the county officials *shall use such appraised valuations as a basis for determining the true and actual value for assessment purposes. . . .* This Court adheres to the view that *'the use of the word shall without any modification unquestionably makes the direction mand[a]tory.'*"

As has been previously noted, W.Va. Code § 11-3-25 provides that in instances of erroneous assessment the

Circuit Court is to "correct the assessment, and fix the property at its true and actual value". In performing this function, our Court, in Tug Valley Recovery Center, Inc. v. Mingo County Commission, 261 S.E.2d 165, at 173, and in Killen v. Logan County Commission, W.Va., 295 S.E.2d 689, at 705, stated that "[*i*]*t is incumbent upon the circuit court, as it would be upon the county commission and the assessor, to set the assessed value of all parcels of land at the amount established by the State Tax Commissioner.*"

Consistent with our Courts' directive and in consideration of the evidence adduced, including Exhibit I, the Tax Commissioner's Guide of Assessors Valuation of Coal Appraisals, indicating an appraised value for Webster County coal of $360.00 per acre, during the period involved, a reduction in valuation is required.

It is therefore, pursuant to the provisions of W.Va. Code § 11-3-25, the judgment and order of this Court and this Court finds and fixes the true and actual value of petitioners' parcels 4Q-16, 4P-1, 4Q-15, 3Q-5, 3Q-9, 3P-15, a 100 acre parcel of Coal and a 100 acre mineral parcel, both situate on Beaver Creek, be at $360.00 per acre.

It is the further JUDGMENT and ORDER of the Court that the assessment of parcels 4R-67, 4Q-6, 4Q-7, 4Q-71-1 and 45-91 for a period in question be and the same is hereby affirmed, it being the finding of this Court that from, the small size of said parcels, the imposition of comparable assessments to comparable properties of others and a lack of evidence establishing that the assessments were not uniform as to these parcels, that petitioners have not shown these assessments to be erroneous.

It is the further JUDGMENT and ORDER of this Court and this Court finds and fixes the true and actual value of petitioners' parcels 4Q-15, 3P-14, 3P-12, 3P-11 and 3P-13 at $300.00 per acre.

It is the further JUDGMENT and ORDER of this Court that the assessor recompute petitioners assessed valuations in a manner consistent with true and actual values herein before found and fixed by this Court, at sixty percent thereof, and that the assessor forthwith issue new tax tickets to petitioners applying the correct levy rate to the corrected valuations and assessments.

Inasmuch as the petitioners have not paid tax for the years 1983, and 1984 it is the further JUDGMENT and ORDER of this Court that said petitioners should be and they are hereby released from the payment of taxes assessed and levied upon the valuations and assessments hereinbefore found to have been erroneous.

It is the further JUDGMENT and ORDER of this Court that the Assessor of Webster County, Dana Lynch, consistent with his duty to comply with Section 1, Article X of the West Virginia Constitution requiring equal and uniform taxation, immediately contact the office of the State Tax Commissioner of West Virginia and schedule a meeting with said Tax Commissioner, or such deputy or representative as said Tax Commissioner shall designate, for the purpose of evaluating and reviewing current real estate assessments in Webster County, West Virginia; determining whether said assessments are being made in violation of the equal and uniform provisions of Article X, Section 1; whether said assessments are generally equal and uniform throughout the county, and if not a description of actions needful and necessary to secure equal and uniform taxation; whether the assessor is effectively utilizing the technology, materials and assistance available through said Commissioner's office, and that said assessor do appear before the undersigned, at the Webster County Courthouse, Webster Springs, West Virginia, in the Courtroom therein, at one o'clock p.m., on January 17, 1986, and then and there report to this Court in writing and verbally the result of the evaluations, review and determinations herein ordered.

ENTERED THIS THE 22ND DAY OF NOVEMBER. 1985.

/s/ Danny O. Cline
DANNY O. CLINE
Judge

IN THE CIRCUIT COURT
OF WEBSTER COUNTY, WEST VIRGINIA

Civil Action No. 84-MSC-8

IN RE: TAX ASSESSMENT AGAINST
ALLEGHENY PITTSBURGH COAL COMPANY
FOR YEAR 1983

Civil Action No. 84-MSC-9

IN RE: TAX ASSESSMENT AGAINST
EAST KENTUCKY ENERGY CORPORATION
FOR YEAR 1984

Civil Action No. 85-MSC-20

IN RE: TAX ASSESSMENT AGAINST
EAST KENTUCKY ENERGY CORPORATION
FOR YEAR 1985

ORDER

On the 7th day of January, 1986, this action came on to be heard before the Court, the taxpayer and County Commission appearing by counsel; upon motion of the County Commission to enter an order directing the taxpayer to pay, under protest, the tax assessment entered by the Board of Equalization and Review of Webster County for the tax years 1983 and 1984, including interest and cost, and further that this Court direct the Sheriff of Webster County, West Virginia, to refund to the taxpayer the tax heretofore paid, pursuant to order of this Court, for the year 1985 and direct that the Sheriff only accept payment for taxes assessed for the

year 1985 from the taxpayer under protest, all in accordance with a decision of the West Virginia Supreme Court of Appeals rendered in case number 16911, written opinion which was filed December 18, 1985, and order of prohibition which was issued at the same time and served thereafter; upon argument of counsel; upon the Court being of the opinion that said opinion of the Supreme Court does not order this Court to direct the taxpayer to pay the taxes as assessed under protest in this case, where the same have been held by this Court to have been unconstitutionally assessed, where an order has been entered reducing said assessments therefor and releasing the taxpayer from payment of taxes assessed and levied upon the valuations and assessments found to have been erroneous, and where the taxpayer has paid the taxes based on said order all within the time specified by the Supreme Court in its opinion of December 18, 1985; it is, therefore:

ORDERED AND ADJUDGED that the motion of the County Commission be, and the same is hereby, denied, all for the reasons set forth herein and in transcript of January 7, 1986, to which reference is here made. The objections and exceptions of the County Commission are noted by the Court.

ENTER: 31st day of January, 1986.

/s/ Danny O. Cline
DANNY O. CLINE
Judge

IN THE CIRCUIT COURT
OF WEBSTER COUNTY, WEST VIRGINIA

CA #2309

IN RE: 1975 TAX ASSESSMENT AGAINST
PARDEE & CURTIN LUMBER CO.

vs.

COUNTY COURT OF WEBSTER COUNTY

CA #2531

IN RE: 1976 TAX ASSESSMENT AGAINST
PARDEE & CURTIN LUMBER CO.

vs.

COUNTY COURT OF WEBSTER COUNTY

CA #2533

IN RE: 1976 TAX ASSESSMENT AGAINST
SUN LUMBER COMPANY

vs.

COUNTY COURT OF WEBSTER COUNTY

CA #2532

IN RE: 1976 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #

IN RE: 1977 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #78-C-33

IN RE: 1978 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #79-C-38

IN RE: 1979 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #80-C-59

IN RE: 1980 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #81-C-39

IN RE: 1981 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #82 Misc. 26

IN RE: 1982 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

Civil Action No. 84-MSC-8

IN RE: TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY
FOR YEAR 1983

Civil Action No. 84-MSC-9

IN RE: TAX ASSESSMENT AGAINST
EAST KENTUCKY ENERGY CORPORATION
FOR YEAR 1984

Civil Action No. 85-MSC-20

IN RE: TAX ASSESSMENT AGAINST
EAST KENTUCKY ENERGY CORPORATION
FOR YEAR 1985

ORDER

This matter came on to be heard on the 31st day of January, 1986 upon various and sundry matters and there appeared East Kentucky Energy Corporation by Dan O. Callaghan, its attorney and Allegheny-Pittsburgh Coal Company, Pardee & Curtin Lumber Company and The Sun Lumber Company by Ernest V. Morton, Jr., their attorney.

Among other things, Allegheny-Pittsburgh Coal Company, Pardee & Curtin Lumber Company and The Sun Lumber Company, by their attorney moved that in each and all of their cases the principles enunciated and set forth in the Court's order of November 22nd, 1985 be taken and applied to their specific cases and that the ruling of the Court therein be likewise held to apply to said cases, which motion the Court sustained.

Accordingly, it is hereby ADJUDGED and ORDERED that the rulings and holdings of this Court insofar as the same are applicable thereto, are hereby held and deemed to be the law enunciated and the ruling on the relief sought in each and all of the cases of the said Allegheny-Pittsburgh Coal Company, Pardee & Curtin Lumber Company and The Sun Lumber Company heretofore enumerated.

Enter this 20th day of February, 1986.

/s/ Danny O. Cline
Judge

IN THE CIRCUIT COURT
OF WEBSTER COUNTY, WEST VIRGINIA

CA #2309

IN RE: 1975 TAX ASSESSMENT AGAINST
PARDEE & CURTIN LUMBER CO.

vs.

COUNTY COURT OF WEBSTER COUNTY

CA #2531

IN RE: 1976 TAX ASSESSMENT AGAINST
PARDEE & CURTIN LUMBER CO.

vs.

COUNTY COURT OF WEBSTER COUNTY

CA #2533

IN RE: 1976 TAX ASSESSMENT AGAINST
SUN LUMBER COMPANY

vs.

COUNTY COURT OF WEBSTER COUNTY

CA #2532

IN RE: 1976 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #

IN RE: 1977 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #78-C-33

IN RE: 1978 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #79-C-38

IN RE: 1979 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #80-C-59

IN RE: 1980 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #81-C-39

IN RE: 1981 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #82 Misc. 26

IN RE: 1982 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

Civil Action No. 83-MSC-8

IN RE: TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY
FOR YEAR 1983

Civil Action No. 84-MSC-9

IN RE: TAX ASSESSMENT AGAINST
EAST KENTUCKY ENERGY CORPORATION
FOR YEAR 1984

Civil Action No. 85-MSC-20

IN RE: TAX ASSESSMENT AGAINST
EAST KENTUCKY ENERGY CORPORATION
FOR YEAR 1985

Civil Action No. 86-MSC-17

IN RE: TAX ASSESSMENT AGAINST
EAST KENTUCKY ENERGY CORPORATION
FOR YEAR 1986

Civil Action 81-C-42

IN RE: SHAMROCK COAL COMPANY, INC.,
A CORPORATION

Civil Action No. 82-M-18

IN RE: ONEIDA COAL COMPANY, INC.,
A CORPORATION

Civil Action No. 83-MSC-10

IN RE: ONEIDA COAL COMPANY, INC.,
A CORPORATION

Civil Action No. 84-MSC-10

IN RE: ONEIDA COAL COMPANY, INC.,
A CORPORATION

Civil Action No. 85-MSC-19

IN RE: ONEIDA COAL COMPANY, INC.,
A CORPORATION

Civil Action No. 86-MSC-18

IN RE: ONEIDA COAL COMPANY, INC.,
A CORPORATION

[Filed Aug. 15, 1986]

ORDER

This 21st day of March, 1986, there appeared East Kentucky Energy Corporation by Dan O. Callaghan, its attorney, Oneida Coal Company, Inc., by W. T. Weber, Jr., its attorney, Allegheny-Pittsburgh Coal Company, Pardee & Curtin Lumber Company and The Sun Lumber Company by Ernest V. Morton, Jr., their attorney and the County Commission of Webster County, West Virginia by Jack Alsop, Prosecuting Attorney for Webster County, West Virginia, its attorney.

Whereupon, the County Commission of Webster County, West Virginia, by counsel, moved that the above styled actions be consolidated for appeal to the West Virginia Supreme Court of Appeals on the basis that there exists a common question of law in regards to said actions.

The Court, after considering said motion and none of the parties having any objection to the consolidation of the above styled actions for the purpose of appeal, deems said motion proper and sustains the same. It is accordingly ADJUDGED and ORDERED that the above styled actions be and they are hereby consolidated for the purposes of appeal to the West Virginia Supreme Court of Appeals.

Enter Nunc Pro Tunc: March 21, 1986

Date: August 15, 1986

/s/ Danny O. Cline
DANNY O. CLINE
Judge

APPENDIX E

IN THE COUNTY COURT
OF WEBSTER COUNTY, WEST VIRGINIA

Sitting as the Board of Equalization and Review

ORDER

The Court, after having received the petitions of Pardee and Curtin Lumber Company, a corporation, The Sun Lumber Company, a corporation, and Allegheny Pittsburgh Corporation, a corporation, and having heard the testimony offered at the hearing, in which the evidence was transcribed; and after having given due consideration to said evidence, is of the opinion that the assessments as arrived at by the Assessor of Webster County were true and correct. And after having considered all the factors involved in said protest, including the facts as testified to and the law applicable, the Court is of the opinion that the petitions of said corporations are without merit, and does hereby reject the same and hereby conclude that the assessments as found by the Assessor are correct.

It is, therefore, ordered that the assessments as found by the Assessor be, and they are hereby retained as the true and lawful assessment for said corporations.

It is further adjudged and ordered that the Clerk of this Court shall certify a copy of this order and mail the same to Mr. Ernest V. Morton, Jr., attorney for Pardee and Curtin Lumber Company, a corporation, The Sun Lumber Company, a corporation and Allegheny Pittsburgh Corporation, a corporation.

Enter this the 27th day of February, 1976.

_____

_____

_____

A true copy from the Record.

Court Order Book No. 20, Page 340.

Attest: /s/ Nancy C. Gillespie, Clerk

BEFORE THE COUNTY COMMISSION
OF WEBSTER COUNTY, WEST VIRGINIA
Acting as a Board of Equalization and Review

IN RE: TAX ASSESSMENT AGAINST
ALLEGHENY PITTSBURGH COAL COMPANY,
A CORPORATION

[Filed Mar. 28, 1978]

This 17th day of February, 1978, the County Commission of Webster County, s[i]tting as a board of equalization and review, having considered the petition of the Allegheny Pittsburgh Coal Company, a corporation, in regard to its assessment within Webster County, West Virginia, for the year 1978, and the Commission, after having considered said evidence and considered the evidence produced by the County of Webster, is of the opinion that the petitioner has failed to prove that the property in the name of Allegheny Pittsburgh Coal Company is improperly valued on the land books for the year 1978, and the said Allegheny Pittsburgh Coal Company having failed to produce that the method by which the Assessor of Webster County arrived at the value of said land was not uniform and equal, as required by the Constitution of West Virginia, Article 10, Section 1, and the County having adduced evidence and proven that the Assessor, by using a uniform and equal method, properly arrived at the assessed land and that said assessment was proper, the relief prayed for by the said Allegheny Pittsburgh Coal Company is hereby denied, and it is further OR-

DERED that the Assessor extend the taxes in accordance with the value assessed on the 1978 land books.

ENTERED: February 24, 1978.

/s/ Coy D. Gillespie
COY GILLESPIE

/s/ Frank Ayers
FRANK AYERS

/s/ Frances E. Clutter
FRANCES CLUTTER

BEFORE THE COUNTY COMMISSION
OF WEBSTER COUNTY, WEST VIRGINIA

Acting as a Board of Review and Equalization

IN RE: TAX ASSESSMENTS AGAINST
ALLEGHENY PITTSBURGH COAL COMPANY,
A CORPORATION

ORDER

This 21st day of February, 1979, the County Commission of Webster County, s[i]tting as a Board of Equalization and Review, having considered the petition of the Allegheny Pittsburgh Coal Company, a corporation, in regard to its assessment within Webster County, West Virginia, for the year 1979, and the Commission, after having considered said evidence and considered the evidence produced by the County of Webster, is of the opinion that the petitioner has failed to prove that the property in the name of Allegheny Pittsburgh Coal Company is improperly valued on the land books for the year 1979, and the said Allegheny Pittsburgh Coal Company having failed to produce evidence that the method by which the Assessor of Webster County arrived at the value of said land was not uniform and equal, as required by the Constitution of West Virginia, Article 10, Section 1, and the County having produced evidence and proven that the Assessor, by using a uniform and equal method, properly arrived at the assessed land value and that said assessment was proper, the relief prayed for by the said Allegheny Pittsburgh Coal Company is hereby

denied, and it is further ORDERED that the Assessor extend the taxes in accordance with the value assessed on the 1979 land books.

ENTERED: February 28, 1979.

/s/ E. Frank Ayers
E. FRANK AYERS

COY GILLESPIE

/s/ Frances Clutter
FRANCES CLUTTER

A true copy from the Record

Court Order Book 21 Page 95

Attest: /s/ Nancy C. Gillespie, Clerk

BEFORE THE COUNTY COMMISSION
OF WEBSTER COUNTY, WEST VIRGINIA

Acting as a Board of Review and Equalization

IN RE: TAX ASSESSMENTS AGAINST
ALLEGHENY PITTSBURGH COAL COMPANY,
A CORPORATION

ORDER

This 27th day of February, 1980, the County Commission of Webster County, sitting as a Board of Equalization and Review, having considered the petition of the Allegheny Pittsburgh Coal Company, a corporation, in regard to its assessment within Webster County, West Virginia, for the year 1980, and the Commission, after having considered said evidence and considered the evidence produced by the County of Webster, is of the opinion that the petitioner has failed to prove that the property in the name of Allegheny Pittsburgh Coal Company, is improperly valued on the Land Books for the year 1980, and the said Allegheny Pittsburgh Coal Company having failed to produce evidence that the method by which the Assessor of Webster County arrived at the value of said land was not uniform and equal, as required by the Constitution of West Virginia, Article 10, Section 1, and the County having produced evidence and proven that the Assessor, by using a uniform and equal method properly arrived at the assessed land value and that said assessment was proper, the relief prayed for by the said Allegheny Pittsburgh Coal Company is hereby denied, and it is further ORDERED that the Assessor

extend the taxes in accordance with the value assessed on the 1980 land books.

ENTERED: July 1, 1980.

/s/ Frances E. Clutter

/s/ Coy D. Gillespie

A true copy from the Record.

Court Order Book No. 21

Attest: /s/ Nancy C. Gillespie, Clerk

BEFORE THE COUNTY COMMISSION
OF WEBSTER COUNTY, WEST VIRGINIA

Acting as a Board of Review and Equalization

IN RE: TAX ASSESSMENTS AGAINST
ALLEGHENY PITTSBURGH COAL COMPANY,
A CORPORATION

ORDER

This 27th day of February, 1981, the County Commission of Webster County, sitting as a Board of Equalization and Review, having considered the petition of the Allegheny Pittsburgh Coal Company, a corporation, in regard to its assessment within Webster County, West Virginia, for the year 1981, and the Commission, after considered said evidence and considered the evidence produced by the County of Webster, is of the opinion that the petitioner has failed to prove that the property in the name of Allegheny Pittsburgh Coal Company, is improperly valued on the Land Books for the year 1981, and the said Allegheny Pittsburgh Coal Company having failed to produce evidence that the method by which the Assessor of Webster County arrived at the value of said land was not uniform and equal, as required by the Constitution of West Virginia, Article 10, Section 1, and the County having produced evidence and proven that the Assessor, by using a uniform and equal method properly arrived at the assessed land value and that said assessment was proper, the relief prayed for by the said Allegheny Pittsburgh Coal Company is hereby denied, and it is further ORDERED that the Assessor extend the

taxes in accordance with the value assessed on the 1981 land books.

ENTERED: February 27, 1981.

/s/ Ernest F. Ayers
President

/s/ Coy D. Gillespie
Commissioner

/s/ Joe Adams
Commissioner

BEFORE THE COUNTY COMMISSION
OF WEBSTER COUNTY, WEST VIRGINIA

Acting as a Board of Review and Equalization

IN RE: TAX ASSESSMENTS AGAINST
ALLEGHENY PITTSBURGH COAL COMPANY,
A CORPORATION

ORDER

This 15th day of February, 1982, the County Commission of Webster County, sitting as a Board of Equalization and Review having considered the petition of the Allegheny Pittsburgh Coal Company, a corporation, in regard to its assessment within Webster County, West Virginia, for the year 1982, and the Commission, after considering said evidence and considered the evidence produced by the County of Webster, is of the opinion that the petitioner has failed to prove that the property in the name of Allegheny Pittsburgh Coal Company, is improperly valued on the Land Books for the year 1982, and the said Allegheny Pittsburgh Coal Company *Coal Company* having failed to produce evidence that the method by which the Assessor of Webster County arrived at the value of said land was not uniform and equal, as required by the Constitution of West Virginia, Article 10, Section 1, and the County having produced evidence and proven that the Assessor, by using a uniform and equal method properly arrived at the assessed land value and that said assessment was proper, the relief prayed for by the said Allegheny Pittsburgh Coal Company is hereby denied, and it is further ordered

that the Assessor extend the taxes in accordance with the value assessed on the 1982 Land Books.

ENTERED: February 15, 1982.

A true copy from the Record.

Court Order Book No. 21 Page 436.

Attest: /s/ Nancy C. Gillespie, Clerk

APPENDIX F

WEST VIRGINIA CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of West Virginia, Article X, § 1

Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value; except that the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including livestock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property shall not exceed fifty cents on each one hundred dollars of value thereon and upon all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants one dollar; and upon all other property situated outside of municipalities, one dollar and fifty cents; and upon all other property situated within municipalities, two dollars; and the legislature shall further provide by general law, for increasing the maximum rates, authorized to be fixed, by the different levying bodies upon all classes of property, by submitting the question to the voters of the taxing units affected, but no increase shall be effective unless at least sixty percent of the qualified voters shall favor such increase, and such increase shall not continue for a longer period than three years at any one time, and shall never exceed by more than fifty percent the maximum rate herein provided and prescribed by law; and the revenue derived from this source shall be apportioned by the legislature among the levying units of the State in proportion to the levy laid in said units upon real and other personal property; but property used for educational, literary, scientific, religious or charitable purposes, all cemeteries, public property, the personal property, including livestock, employed exclusively in agriculture as above defined and the products of agriculture as so defined while owned by the producers may by law be exempted from taxation; household goods to the value of two hundred dollars shall be exempted from taxation. The legislature shall have authority to tax privileges, franchises, and incomes of persons and corporations and to classify and graduate the tax on all incomes according to the amount thereof and to exempt from taxation, incomes below a minimum to be fixed from time to time, and such revenues as may be derived from such tax may be appropriated as the legislature may provide. After the year nineteen hundred thirty-three, the rate of the state tax upon property shall not exceed one cent upon the hundred dollar valuation, except to pay the principal and interest of bonded indebtedness of the State now existing.

Constitution of West Virginia, Article X, § 1 b.

(Property Tax Limitation and Homestead Exemption Amendment of 1982)

Ad valorem property taxation shall be in accordance with this section and other applicable provisions of this article not inconsistent with this section.

Subsection A—Value; Rate of Assessment; Exceptions

Notwithstanding any other provisions of this Constitution and except as otherwise provided in this section, all property subject to ad valorem taxation shall be assessed at sixty percent of its value, as directed to be ascertained in this section, except that the legislature may

from time to time, by general law agreed to by two thirds of the members elected to each house, establish a higher percentage for the purposes of this paragraph, which percentage shall be uniform as to all classes of property defined in section one of this article, but not more than one hundred percent of such value.

Notwithstanding the foregoing, for the first day of July, one thousand nine hundred eighty-two, and the first day of July of each year thereafter until the values may be fixed as a result of the first statewide reappraisal hereinafter required, assessments shall be made under the provisions of current statutory law, which is hereby validated for such purpose until and unless amended by the legislature. Assessment and taxation in accord with this section shall be deemed to be equal and uniform for all purposes.

Subsection B—Determination of Value

The legislature shall provide by general law for periodic statewide reappraisal of all property, which reappraisal shall be related for all property to a specified base year which, as to each such reappraisal, shall be uniform for each appraisal for all classes of property and all counties. In such law, the legislature shall provide for consideration of (1) trends in market values over a fixed period of years prior to the base year, (2) the location of the property, and (3) such other factors and methods as it may determine: Provided, that with respect to reappraisal of all property upon the base year of one thousand nine hundred eighty, such reappraisals are deemed to be valid and in compliance with this section: Provided, however, that with respect to farm property, as defined from time to time by the legislature by general law, the determination of value shall be according to its fair and reasonable value for farming purposes, as may be defined by general law.

The results of each statewide appraisal shall upon completion be certified and published and errors therein may be corrected, all as provided by general law. The first such statewide appraisal shall be completed, certified and published on or before the thirty-first day of March, one thousand nine hundred eighty-five, for use when directed by the legislature.

The legislature shall further prescribe by general law the manner in which each statewide reappraisal shall be employed to establish the value of the various separately assesed parcels or interests in parcels of real property and various items of personal property subject to ad valorem property taxation, the methods by which increases and reductions in value subsequent to the base year of each statewide reappraisal shall be ascertained, and require the enforcement thereof.

Subsection C—General Homestead Exemption

Notwithstanding any other provisions of this Constitution to the contrary, the first twenty thousand dollars of assessed valuation of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his residence who is a citizen of the state and who is sixty-five years of age or older or is permanently and totally disabled as that term may be defined by the legislature, shall be exempt from ad valorem property taxation, subject to such requirements, limitations and conditions as shall be prescribed by general law.

Notwithstanding any other provision of this Constitution to the contrary, the legislature shall have the authority to provide by general law for an exemption from ad valorem property taxation in an amount not to exceed the first twenty thousand dollars of value of any real

property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his residence who is a citizen of this state, and who is under sixty-five years of age and not totally and permanently disabled: Provided, that upon enactment of such general law, this exemption shall only apply to such property in any county in which the property was appraised at its value as of the first day of January, one thousand nine hundred eighty, or thereafter, as determined by the legislature, and this exemption shall be phased in over such period of time not to exceed five years from the date such property was so appraised, or such longer time as the legislature may determine by general law: Provided, however, that in no event shall any one person and his spouse, or one homestead be entitled to more than one exemption under these provisions: Provided further, that these provisions are subject to such requirements, limitations and conditions as shall be prescribed by general law.

The legislature shall have the authority to provide by general law for property tax relief to citizens of this State who are tenants of residential or farm property.

Subsection D—Additional Limitations on Value

With respect to the first statewide reappraisal, pursuant to this section, the resulting increase in value in each and every parcel of land or interest therein and various items of personal property subject to ad valorem property taxation over and above the previously assessed value shall be allocated over a period of ten years in equal amounts annually.

The legislature may by general law also provide for the phasing in of any subsequent statewide reappraisal of property.

Subsection E—Levies for Free Schools

In equalizing the support of free schools provided by state and local taxes, the legislature may require that the local school districts levy all or any portion of the maximum levies allowed under section one of this article which has been allocated to such local school districts.

Within the limits of the maximum levies permitted for excess levies for schools or better schools in sections one and ten of this article, the legislature may, in lieu of the exercise of such powers by the local school districts as heretofore provided, submit to the voters, by general law, a statewide excess levy, and if it be approved by the required number of voters, impose such levy subject however to all the limitations and requirements for the approval of such levies as in the case of a district levy. The law submitting the question to the voters shall provide, upon approval of the levy by the voters, for the assumption of the obligation of any local excess levies for schools then in force theretofore authorized by the voters of a local taxing unit to the extent of such excess levies imposed by the state and so as to avoid double taxation of those local districts. The legislature may also by general law reserve to the school districts such portions of the power to lay authorized excess levies as it may deem appropriate to enable local school districts to provide educational services which are not required to be furnished or supported by the state. If a statewide excess levy for the support of free schools is approved by the required majority, the revenue from such a statewide excess levy shall be deposited in the state treasury and be allocated first for the local obligations assumed and thereafter for such part of the state effort to support free schools, by appropriation or as the law submitting the levy to the voters shall require, as the case may be.

The defeat of any such proposed statewide excess levy for school purposes shall not in any way abrogate or im-

pair any local existing excess levy for such purpose nor prevent the adoption of any future local excess levy for such purpose.

Subsection F—Implementation

In the event of any inconsistency between any of the provisions of this section and other provisions of this Constitution, the provisions of this section shall prevail. The legislature shall have plenary power to provide by general law for the equitable application of this article and, as to taxes to be assessed prior to the first statewide reappraisal, to make such laws retroactive to the first day of July, one thousand nine hundred eighty-two or thereafter.

West Virginia Code, § 11-3-1. Time and basis of assessments; true and actual value; default; reassessment; special assessors.

All property shall be assessed annually as of the first day of July at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale, except that the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes shall be arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented: Provided, That the true and actual value of all farms used, occupied and cultivated by their owners or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if

used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might to expected to earn under normal conditions in the locality wherein situated, if rented: Provided, however, That nothing herein shall alter the method of assessment of lands or minerals owned by domestic or foreign corporations. The taxes upon all property shall be paid by those who are the owners thereof on that day, whether it be assessed to them or others. If at any time after the beginning of the assessment year, it be ascertained by the tax commissioner that the assessor, or any of his deputies, is not complying with this provision or that he has failed, neglected or refused, or is failing, neglecting or refusing after five days' notice to list and assess all property therein at its true and actual value, the tax commissioner may order and direct a reassessment of any or all the property in any county, district or municipality, where any assessor, or deputy, fails, neglects or refuses to assess the property in the manner herein provided. And for the purpose of making such assessment and correction of values, the tax commissioner may appoint one or more special assessors, as necessity may require, to make such assessment in any such county, and any such special assessor or assessors, as the case may be, shall have all power and authority now vested by law in assessors, and the work of such special assessor or assesors shall be accepted and treated for all purposes by the county boards of review and equalization and the levying bodies, subject to any revisions of value on appeal, as the true and lawful assessment of that year as to all property valued by him or them. The tax commissioner shall, with the approval of the board of public works, fix the compensation of all such special assessors as may be designated by him, which, together with their actual expenses, shall be paid out of the county fund by the county commission of the county in which any such assessment is ordered, upon the receipt of a certificate of

the tax commissioner filed with the clerk of the county commission showing the amounts due and to whom payable, after such expenses have been audited by the county commission.

Any assessor who knowingly fails, neglects or refuses to assess all the property of his county, as herein provided, shall be guilty of malfeasance in office, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars, or imprisoned in the county jail not less than three nor more than six months, or both, in the discretion of the court, and upon conviction, shall be removed from office.

West Virginia Code, § 11-3-25. Relief in circuit court against erroneous assessment.

Any person claiming to be aggrieved by any assessment in any land or personal property book of any county who shall have appeared and contested the valuation or whose assessment has been raised by the county court [county commission] above the assessment fixed by the assessor, or who contested the classification or taxability of his property may, at any time up to thirty days after the adjournment of the county court [county commission], apply for relief to the circuit court of the county in which such books are made out; but he shall, before any such application is heard, give ten days' notice to the prosecuting attorney of the county, whose duty it shall be to attend to the interests of the State, county and district in the matter, and the prosecuting attorney shall give at least five days' notice of such hearing to the tax commissioner. The right of appeal from any assessment by the county court [county commission], as hereinbefore provided, may be taken either by the applicant or by the State, and in case the applicant, by his agent or attorney, or the State, by its prosecuting attorney or tax commissioner, desires to take an appeal from the decision of the county court [county commission], the

party desiring to take such an appeal shall have the evidence taken at the hearing of the application before the county court [county commission]. If there was an appearance by or on behalf of the owner before the county court [county commission], or if actual notice, certified by such court [county commission], was given to the owner, the appeal, when allowed by the court or judge, in vacation, shall be determined from the evidence so certified. If, however, there was no actual notice to such owner, and no appearance by or on behalf of the owner before the county court [county commission], or if a question of classification or taxability is presented, the matter shall be heard de novo by the circuit court. If, upon the hearing of such appeal, it is determined that any property has been valued at more than its true and actual value, or illegally classified or assessed, the circuit court shall, by an order entered of record, correct the assessment, and fix the property at its true and actual value. A copy of such order or orders entered by the circuit court reducing the valuation shall be certified to the auditor, if the order or orders pertain to real property, by the clerk within twenty days after the entering of the same, and every order or judgment shall show that the prosecuting attorney or tax commissioner was present and defended the interest of the State, county and district. If it be ascertained that any property has been valued too high, and that the owner has paid the excess tax, it shall be refunded to him, and if not paid he shall be relieved from the payment thereof. If it is ascertained that any property is valued too low the circuit court shall, by an order entered of record, correct the valuation and fix it at its true and actual value. A copy of any order entered by any circuit court increasing the valuation of property shall be certified within twenty days, if the order pertains to real property, to the auditor, the county clerk and the sheriff; however, if the order pertains only to personal property, then the copy shall be certified within twenty days to the county clerk and to the sheriff

and it shall be the duty of the auditor, the county clerk and the sheriff to charge the taxpayer affected with the increase of taxes occasioned by the increase of valuation by applying the rate of levies for every purpose in the district where such property is situated for the current year. The order shall also be filed in the office of the auditor and clerk of the county court [county commission]. Any order disposing of a question of classification or taxability shall be similarly prepared, certified and filed, and the increase or decrease of taxes resulting shall be treated as provided above for changes in valuation. The State or the aggrieved taxpayer may appeal a question of valuation to the supreme court of appeals, if the assessed value of the property is fifty thousand dollars or more, and either party may appeal a question of classification or taxability.

West Virginia Code, § 18-9A-11. Computation of local share; appraisal and assessment of property.

(a) On the basis of the most recent survey of property valuations in the State, completed as to all classes of property in all counties determined by the tax commissioner under present or former provisions of this article, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two [§ 18-9A-2] of this article, the amount of revenue which such levies would produce if levied upon one hundred percent of the appraised value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows: (1) The state board shall first take ninety-seven and one-half percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county. (2) The state board shall then apply these rates to the appraised value of other property in each classification in the county as determined by the

tax commissioner and shall deduct therefrom five percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. Fifty percent of the amount so determined shall be added to the ninety-seven and one-half percent of public utility taxes computed as provided above and this total shall be the local share of the particular county.

Effective the first day of July, one thousand nine hundred eighty-two, fifty-five percent of the amount so determined shall be added to the ninety-seven and one-half percent of public utility taxes computed as provided above and this total shall be the local share of the particular county.

(b) The tax commissioner shall make or cause to be made an appraisal in the several counties of the State of all nonutility real property and of all nonutility personal property which shall be based upon true and actual value as set forth in article three [§ 11-3-1 et seq.], chapter eleven of this Code. In determining the value of personal property—other than all machinery, equipment, furniture and fixtures of any industrial plant, mine, quarry or installation and of any commercial, industrial or professional establishment—the tax commissioner shall prescribe accepted methods of determining such values. The tax commissioner shall in accordance with such methods determine the value of such property.

For the purpose of appraising commercial, industrial and professional properties, the tax commissioner, after consultation with the county commission, may employ a competent property appraisal firm or firms, which appraisals shall be under his supervision and direction.

In making or causing to be made such appraisal, the tax commissioner shall employ such assistance as available appropriations will permit and shall prescribe and use such accepted methods and procedures for checking property values and determining the amount of property

in the several classes of property provided by law as are customarily employed for appraisal purposes.

(c) Such appraisal of all said property in the several counties shall be completed prior to the first day of July, one thousand nine hundred sixty-seven. Each year after the completion of the property appraisal in a county the tax commissioner shall maintain the appraisal by making or causing to be made such surveys, examinations, audits, maps and investigations of the value of the several classes of property in each county which should be listed and taxed under the several classifications, and shall determine the appraised value thereof. On the basis of information so ascertained, the tax commissioner shall annually revise his reports to the legislature and to the state board concerning such appraisals, such reports to be made not later than the first day of January of each year.

(d) The tax commissioner shall prescribe appropriate methods for the appraisal of the various types of property subject to taxation as public utilities and the types of property which are to be included in the operating property of a public utility and thereby not subject to taxation by the county assessor. Only parcels or other property, or portions thereof, which are an integral part of the public utility's function as a utility shall be included as operating property.

(e) As information from such appraisal of property in a county under the provisions of this section becomes available for a district, municipality and county, the tax commissioner shall notify the county commission and the assessor of said county that such information is available and shall make available to said county commission and assessor all data, records and reports or other information relating to said work, along with a list of any properties in said district, municipality and county which are entered on the assessment rolls but for which no ap-

praisal has been made, a list of any properties which were appraised but which cannot be found on the assessment rolls and a list of all properties carried on the assessment rolls which have not been identified on the map. Said list shall set forth the name of the owner and a description of the property and the reason, if known, for its failure to have been entered on the assessment rolls or to have been appraised or to have been identified on the map, as the case may be.

(f) As such appraisal of property in a county, under this section, is completed to the extent that a total valuation for each class of property can be determined, such appraisal shall be delivered to the assessor and the county commission, and in each assessment year commencing after such appraisal is so delivered and received, the county assessor and the county commission, sitting as a board of equalization and review, shall use such appraised valuations as a basis for determining the true and actual value for assessment purposes of the several classes of property. The total assessed valuation in each of the four classes of property shall not be less than fifty percent nor more than one hundred percent of the appraised valuation of each said class of property: Provided, however, that beginning July one, one thousand nine hundred eighty-one, the total assessed valuation in each of the four classes of property shall not be less than sixty percent of the appraised valuation of each said class of property.

(g) Whenever in any year a county assessor or a county commission shall fail or refuse to comply with the provisions of this section in setting the valuations or property for assessment purposes in any class or classes of property in the county, the state tax commissioner shall review the valuations for assessment purposes made by the county assessor and the county commission and shall direct the county assessor and the county commission to make such corrections in the valuations as may be

necessary so that they shall comply with the requirements of chapter eleven of this Code and this section, and the tax commissioner shall enter the county and fix the assessments at the required ratios. Refusal of the assessor or the county commission to make such corrections shall constitute grounds for removal from office.

(h) In any year in which the total assessed valuation of a county shall fail to meet the minimum requirements above set forth, the county commission of such county shall allocate for such year to the county board of education from the tax levies allowed to the county commission a sufficient portion of its levies as will, when applied to the valuations for assessment purposes of such property in the county, provide a sum of money equal to the difference between the amount of revenue which will be produced by application of the allowable school levy rates defined in section two [§ 18-9A-2] of this article upon the valuations for assessment purposes of such property and the amount of revenue which would be yielded by the application of such levies to fifty percent of the total of appraised valuations of such property. In the event the county commission shall fail or refuse to make the reallocation of levies as provided for herein, the county board of education, the tax commissioner, the state board, or any other interested party, shall have the right to enforce the same by writ of mandamus in any court of competent jurisdiction.

(i) In conjunction with and as a result of the appraisal herein set forth the tax commissioner shall have the power, and it shall be his duty, to establish a permanent records system for each county in the state, consisting of:

(1) Tax maps of the entire county drawn to scale or aerial maps, which maps shall indicate all property and lot lines, set forth dimensions or areas, indicate whether the land is improved, and identify the respective parcels

or lots by a system of numbers or symbols and numbers, whereby the ownership of such parcels and lots can be ascertained by reference to the property record cards and property owner's index;

(2) Property record cards arranged geographically according to the location of property on the tax maps, which cards shall set forth the location and description thereof, the acreage or dimensions, descriptions of improvements, if any, the owner's name, address and date of acquisition, the purchase price, if any, set forth in the deed of acquisition, the amount of tax stamps, if any, on the deed, the assessed valuation, and the identifying number or symbol and number, shown on the tax stamp; and

(3) Property owner's index consisting of an alphabetical listing of all property owners, setting forth brief descriptions of each parcel or lot owned and cross-indexed with the property record cards and the tax map.

(j) The tax commissioner is hereby authorized and empowered to enter into such contracts as may be necessary, and for which funds may be available, to establish the permanent records system herein provided for, or may through his staff and employees, prepare and complete such system.

All microfilm photography and original copies of tax maps created under the provisions of this section are the property of the State of West Virginia and the reproduction, copying, distribution or sale of such microfilm, photography or tax maps or any copies thereof without the written permission of the state tax commissioner is prohibited. Any person who shall violate the provisions of this paragraph shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than three hundred dollars, or imprisoned in the county jail not less than thirty days nor more than one year, or both fined and imprisoned. Mag-

istrates shall have concurrent jurisdiction with other courts having jurisdiction for the trial of all misdemeanors arising under this paragraph.

The tax commissioner shall by uniform regulations establish a procedure for the sale of reproduction of microfilm, photography and maps and may pay for having such reproductions made from the appropriation for "property appraisal." Any funds received as a result of the sale of such reproductions shall be deposited to the appropriated account from which the payment for reproduction is made.

(k) The cost of conducting the appraisal herein provided for shall be borne jointly by the State and the several counties in the following manner and terms: There shall be appropriated from the general revenue fund anually an amount sufficient to maintain the appraisal in all counties of the State. Each county shall furnish, through its county commission, not more than ten percent of the cost of such appraisal or reappraisal and permanent records system for each county. Such county costs may be paid over a period of three years with the approval of the tax commissioner. In those instances where the cost of the appraisal, reappraisal or permanent records system required by this section has been paid by the tax commissioner from funds appropriated for these purposes, the share of such cost allocated to each county shall, upon receipt thereof by the tax commissioner, be deposited to the appropriated account from which such payments have been made. In those instances where a county has heretofore employed a professional appraisal firm to conduct an appraisal or reappraisal of all or part of nonutility property within the past seventeen years, and such appraisal has been accepted by the tax commissioner, with the county having borne in excess of ten percent of the cost of such appraisal, reappraisal, and permanent records system, monetary reimbursement of one third of such excess costs shall be made by the tax

commissioner from funds appropriated for such purpose, to such county, yearly, for a period of three years, in order to establish the joint sharing of such costs as hereinbefore set forth.

(l) The county assessor and the county commission shall comply with the provisions of chapter eleven of this Code in determining the true and actual value of property for assessment purposes and shall not arbitrarily use a direct percentage application to the appraisal valuations, whether complete appraisal or spot survey, of any class of property or property within a class for such purposes.

(m) The provisions of this section shall not be construed to alter or repeal in any manner the provisions of chapter eleven of this Code, but shall be construed in pari materia therewith and compliance with this section by the assessor and county commission shall be considered, pro tanto, as compliance with said chapter eleven.